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Briefing on How To Use the Federal Register
For information on the briefing in St. Louis, MO, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563 and 571

[No. 91-733]

RIN 1550-AA05

Bonds for Directors, Officers, Employees, and Agents; Form and Amount of Bonds

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is replacing its current regulation pertaining to fidelity bond coverage for savings associations with a new rule. The revised rule is intended to eliminate the disparity between the fidelity bond insurance requirements of savings associations and those of commercial banks. The rule requires savings associations to obtain fidelity bond coverage consistent with standards of safety and soundness, but does not require coverage under a specific standardized form and does not, at this time, specify minimum amounts of coverage.

EFFECTIVE DATE: May 13, 1992.

FOR FURTHER INFORMATION CONTACT: Dean V. Shahinian, Assistant Chief Counsel for Corporate Activities, (202) 906-7289, Karen Solomon, Deputy Chief Counsel for Regulations and Legislation, (202) 906-7240; Edward Charity, Jr., Program Analyst, (202) 906-7933, Supervision Policy; Office of Thrift Supervison, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

Beginning in the 1960's, the Federal Home Loan Bank Board (the Board), the predecessor agency to the OTS required by regulation that all savings associations obtain fidelity bond insurance coverage against losses resulting from: officer or employee dishonesty, burglary, robbery, theft, or loss of property while in transit. The Board determined that the thrift industry, and its federal insurance fund, were adequately protected from losses by the bond coverage afforded under the form known as "Standard Form No. 22," and required by regulation that all thrifts use Standard Form No. 22. See 33 FR 18711, 18712 (December 18, 1968), codified at 12 CFR 563.19 (1969). Standard Form No. 22 is a standardized form of fidelity bond that was widely available and easily obtained at the time of the adoption of the original rule and provided broad coverage against loss, dishonesty, or theft.

The OTS today amends the rule requiring the use of Standard Form No. 22. As expressed in the preamble to the proposed rule, and confirmed by the comments OTS received on the proposal, the condition of the fidelity bond insurance marketplace has changed dramatically since the original rule was adopted by the Board in 1968. Standard Form No. 22 is virtually unavailable in the insurance marketplace, and most thrifts are unable to obtain the coverage required by the regulation. For the few thrifts that can still obtain it, Standard Form No. 22 is extremely, often prohibitively, expensive.

Unlike savings associations, commercial banks are not required by regulation to carry fidelity bond coverage. In its examination process, however, the Federal Deposit Insurance Corporation (FDIC) requires coverage under the bond form commonly made available to commercial banks by the insurance underwriting industry, Financial Institution Bond, Form No. 24. Form No. 24 is available to thrifts as well as banks.

At an October, 1990, meeting of the Task Force on Supervision of the Federal Financial Institutions Examination Council (FFIEC), representatives of the bank, thrift, and credit union regulatory agencies determined to form an interagency "Bond Coverage Study Group" to consider fidelity bond coverage issues. The Study Group was formed in response to the regulators' general dissatisfaction with the adequacy of bond coverage currently available, under both Form No. 22 and Form No. 24. This Study Group will review all aspects of fidelity bond coverage including the areas of the minimum amounts of required coverage and minimum standards.

The FFIEC has recently determined to undertake a coordinated effort to encourage the insurance underwriting industry to provide a uniform fidelity bond for both thrifts and commercial banks that is acceptable to the respective regulatory agencies. The OTS continues to support the efforts of the FFIEC to obtain a superior form of bond coverage. Should a new form of coverage ultimately become available, the OTS May revisit the requirements prescribed by today's final rule.

Although the work of the FFIEC on the fidelity bond coverage question is not yet complete, the OTS finds it necessary to amend its existing rule without further delay. Section 563.190 is no longer workable due to the extremely limited availability of Form 22. Those thrifts that are able to obtain coverage in accordance with the regulation pay an exorbitant premium; those that cannot find coverage under Form No. 22 at any price are cited for the regulatory violation during the periodic examination. As a practical matter, therefore, it is impossible for many thrifts to comply with the rule. Nonetheless, OTS believes that the continued effort to devise bond coverage acceptable to all interested parties is extremely important. This rule is only intended to provide clear guidance in the interim.

B. Summary of the Proposal and Description of the Final Regulation

The proposed rule would have substituted the requirement that thrifts obtain coverage under Form No. 24 for the requirement that they obtain Form No. 22. It also deleted the schedule of minimum amounts of coverage and removed 12 CFR 571.14. The rule placed the burden of determining the adequacy and appropriate levels of coverage upon management and the board of directors. In addition, the proposed rule provided several factors that management should consider in its deliberations on the appropriate level of coverage.

The final rule requires thrifts to maintain fidelity bond coverage on every director, officer, employee and

agent who has access to cash, securities or other property of the association. The rule provides that the association's management will determine the appropriate form and amount of coverage, consistent with considerations of safety and soundness. Management's determination will be subject to approval by the association's board of directors. The board of directors shall assess the continuing adequacy of the coverage at least annually.

As adopted, the final rule differs from the proposed rule in two major respects. First, the final rule does not specifically require thrifts to obtain coverage under Form No. 24. In this regard, the final rule is more flexible in its approach to the fidelity bond coverage requirement. This flexible approach, however, does not obviate the affirmative obligation of savings associations to obtain fidelity bond coverage at levels that are consistent with safety and soundness.

The OTS has altered the final rule in order to grant thrifts greater latitude to select the most appropriate form of fidelity bond coverage. The OTS will not specify a particular form of coverage. Depending upon the findings of the Bond Coverage Study Group, however, the OTS may revisit the areas of bond form and minimum insurance amounts.

The OTS has also removed from the final regulation the factors listed in section (b) of the proposed rule regarding management's consideration of an alternative bond form. This change results from the OTS concern that, by listing specific factors for consideration, the rule may cause management to limit its consideration of the appropriate level of coverage to the factors listed. The rule is intended to encourage the reasoned exercise of management's collective judgment on the appropriate form and level of coverage. A rule that limits this review to a specific list of factors does not serve this goal. The OTS, however, encourages management and the board of directors, in assessing the adequacy of the association's fidelity bond coverage, to consider factors including, but not limited to, the following:

(1) The size of the association's asset portfolio and its deposit base;

(2) An overall assessment of the effectiveness of the association's internal operating controls;

(3) The amount of cash, securities, and other property normally held by the association;

(4) The number of the association's employees, their experience and levels of authority, and the turn-over rate in the association's personnel;

(5) The extent of trust powers or EDP activities conducted by the association; and

(6) The extent of coverage provided under the bond coverage of a holding company or other affiliated entity.

C. Summary Of Comments and Responses to Comments

1. General Summary

The comment period closed October 25, 1990. The OTS received 44 comment letters from 42 different commenters. Those who submitted comments included 21 savings associations or savings banks; 16 insurance agents or bond underwriters; and 5 thrift trade groups.

The comments unanimously favored the OTS proposal to eliminate the requirement that savings associations obtain bond coverage under Standard Form No. 22. A number of commenters expressed conncern that the proposal to substitute Form No. 24 for the previously required Form No. 22 was too limiting and would not encourage market innovations or the development of other bond forms. Those commenters suggested that the requirement be revised to allow savings associations the flexibility to contract for bond coverage that deviates from Form No. 24. A number of commenters also requested the OTS to provide formal guidance to savings associations' management and board of directors on the appropriate amount of coverage by, for example, issuing a schedule of minimum coverage amounts.

OTS has considered these comments. The final rule reflects the OTS view that the rule should encourage greater reliance upon management's judgment in the Association's efforts to obtain the most appropriate form of coverage.

2. Specific Issues Discussed

a. Standard Form No. 22 Is Generally Unavailable

All the commenters supported the proposal to eliminate the requirement that savings associations obtain Standard Form No. 22. Most thrifts expressed frustration over the present regulation and welcomed the relief provided by the proposed rule. Almost every savings association or federal savings bank recounted the difficulty, burden, and expense of obtaining or maintaining Form No. 22. Many described the bond required by the current regulation as simply impossible to find on the market. A number of insurance agents and bond underwriters confirmed that they no longer offered Form No. 22 and welcomed the amendment as one that recognized the realities of the marketplace.

b. Savings Associations Burdened by Old Rule

Savings associations, trade groups, insurance agents, and bond underwriters uniformly voiced the belief that the current rule places thrifts at a competitive disadvantage with banks. The FDIC insures both banks and thrifts but permits banks to obtain coverage under Form No. 24. Savings associations, which are subject to the OTS rule, are burdened by the cost of attempting to acquire the more expensive Form No. 22, or an equivalent bond with riders and endorsements added to match the coverage of Form No. 22. These disparate bond requirements result in the thrifts being competitively disadvantaged. Moreover, because the OTS regulation requires Form No. 22, a bond form that is generally unavailable, thrifts are repeatedly cited in examination reports for holding an alternative bond with riders and endorsements that do not match the regulatory requirement.

The final rule reflects these comments. The rule places thrifts in a position of competitive parity with commercial banks and relieves thrifts of the burden associated with obtaining Form No. 22.

c. Substitution of Financial Institution Bond, Standard Form No. 24

The proposed rule substituted Financial Institution Bond, Standard Form No. 24, for the requirement that savings associations obtain Standard Form No. 22. Form No. 24 is the form of fidelity bond held by commercial banks and is widely available in the insurance market. A number of comments from savings associations, trade groups, insurance agents, and underwriters, however, expressed the concern that the proposed rule was not written in a manner that would encourage the introduction of alternative forms of bond coverage superior to Form No. 24. These commenters asserted that the strict substitution of Form No. 24 for Form No. 22 might hinder coverage options at a later date. A more flexible approach to the bond requirement would allow a savings association to adjust to future market conditions, should Form No. 24 become less widely available.

The final rule is amended to reflect these comments. All references to Form No. 24 are removed to allow more flexibility to thrifts to choose from available forms of coverage. Management may not however, select a level of coverage that would be unsafe or unsound.

d. Determination of the Appropriate Bond Coverage

(i) *Management and board of directors approval.* The proposed rule removed the schedule of the required minimum amounts of coverage. In the preamble, OTS expressed the view that the management of the association, working with a reliable insurance professional, could best analyze the exposure to risk and the need for protection, and choose the appropriate levels of coverage. The proposed rule also required the board of directors to approve the final form and amount of coverage.

Those commenters that addressed the issue uniformly approved of the proposal's requirement for board of directors approval of the policy and coverage levels. The commenters agreed that the board of directors should maintain a significant level of involvement in the institution's selection of an underwriter, the bond form, and the level of coverage. Board of directors approval will ensure that the collective experience and judgment of the board is brought to bear upon the process of selecting the appropriate coverage.

At this point, however, the comments diverged. Several savings associations, trade groups, and one insurance agency expressed enthusiasm for the OTS proposal to place entirely upon management the responsibility to determine the appropriate amount of coverage. Some of these commenters characterized the current schedule of required minimum amounts as arbitrary and outdated. If maintained, the schedule would unnecessarily hinder management efforts to obtain appropriate levels of coverage. These commenters thought that management should be afforded the discretion to determine the appropriate levels of coverage.

The OTS concurs with those that advocate greater discretion for management, consistent with safe and sound operations of their association. In the OTS's view, management is in the best position to evaluate the appropriate levels of coverage. Accordingly, the final rule does not include a schedule of minimum coverage levels.

(ii) *Guidelines for levels of coverage.* In contrast, a number of insurance agents and underwriters were of the opinion that management needed guidance on the appropriate levels of coverage. Some stated that the present schedule of required minimum amounts was very useful in determining coverage levels. Management would require similar standardized guidelines to determine coverage levels under the proposed rule. One underwriter characterized the removal of suggested minimum amounts as a serious threat to the financial stability of the institutions protected by its bonds. The same commenter objected to the reliance placed upon the insurance professional to weigh the adequacy of coverage stating that insurance professionals can assess the exposure to risk, not the adequacy of the dollar limits of a policy.

Some of these commenters also expressed concern that the examination process required published standards against which the institution's coverage levels would be measured. Without guidance from the OTS, management would be unable to assess whether it was in compliance with the regulation. Also, the elimination of minimum standards would allow institutions to conduct business with coverage at unacceptable levels during the time period between examinations.

Each of these commenters suggested that OTS provide a schedule of minimum coverages or some other form of suggested standards for determining coverage levels. Such a schedule of minimum amounts could serve as guidelines for management and examiners in assessing whether coverage minimums are sufficient. Some commenters suggested that the schedule take the form of a table of required minimum and maximum levels of coverage based on an association's asset size.

The final rule does not establish a schedule of minimum amounts of coverage. The OTS believes that management is in the best position to determine the appropriate form and level of coverage, consistent with the safe and sound operation of their association. The record of management's assumptions, analysis and conclusions regarding the appropriate form and levels of coverage will be the subject of review by OTS examiners during the examination process.

e. Underwriter Review of Examination Reports

One federal savings bank requested that the OTS consider allowing institutions to provide the bond underwriter with a copy of its examination report. The commenter's underwriter recently required disclosure of the savings bank's most recent report of examination as a condition of continuing isurance coverage. According to the commenter, the OTS will not permit the underwriter to view the confidential report. The savings bank argues that the information in the report would permit the insurer to assess the insurance risk associated with the institution. Lower premiums could result.

The OTS has considered this comment but has not modified the final rule to accommodate the request. To do so would, in the OTS's view, compromise the confidentiality of the examination process.

Executive Order 12291

The OTS has determined that this final rule does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Regulatory Flexibility Act

It is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Consequently, a Regulatory Flexibility Act Analysis is not required.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—[AMENDED]

1. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

2. Section 563.190 is revised to read as follows:

§ 563.190 Bonds for directors, officers, employees, and agents; form of and amount of bonds.

(a) Each savings association shall maintain fidelity bond coverage. The bond shall cover each director, officer, employee, and agent who has control over or access to cash, securities, or other property of the savings association.

(b) The amount of coverage to be required for each savings association shall be determined by the association's management, based on its assessment of the level that would be safe and sound in view of the association's potential exposure to risk; provided, such determination shall be subject to approval by the association's board of directors.

(c) Each savings association may maintain bond coverage in addition to that provided by the insurance underwriter industry's standard forms, through the use of endorsements, riders, or other forms of supplemental coverage, if, in the judgment of the association's board of directors, additional coverage is warranted.

(d) The board of directors of each savings association shall formally approve the association's bond coverage. In deciding whether to approve the bond coverage, the board shall review the adequacy of the standard coverage and the need for supplemental coverage. Documentation of the board's approval shall be included as a part of the minutes of the meeting at which the board approves coverage. Additionally, the board of directors shall review the association's bond coverage at least annually to assess the continuing adequacy of coverage.

PART 571—[AMENDED]

3. The authority citation for part 571 continues to read as follows:

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 571.14 [Removed]

4. Section 571.14 is removed.

Dated: Dec. 26, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92–7966 Filed 4–10–92; 8:45am]

BILLING CODE 6720-01-M

Office of Thirft Supervision

12 CFR Part 564

[No. 92–141]

RIN 1550–AA39

Appraisals

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its appraisal regulations to identify additional transactions for which the services of an appraiser are not required. This final rule eliminates the requirement for regulated institutions to obtain appraisals by certified or licensed appraisers for real estate-related financial transactions having a value, as defined in the rule, of $100,000 or less; and adds a definition of "real estate" and "real property" to clarify that the appraisal regulation does not apply to transactions involving mineral rights, timber rights, growing crops, or similar interests in real estate when the transaction does not involve the associated parcel or tract of land.

The final rule also incorporates three technical amendments which: Clarify that the requirements of the OTS appraisal regulation must be met for all real estate-related financial transactions except those in which the services of an appraiser are not required under the rule; clarify that the abundance of caution exception also applies to real estate-related financial transactions in which the savings association does not take a lien against the real estate collateral; and confirm that in accordance with the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), the OTS has delayed until December 31, 1992 the date by which savings associations must use certified and licensed appraisers for all federally related transactions, although State law may require the use of certified and licensed appraisers prior to this date.

The OTS is adopting this final rule under its authority to issue rules: To implement title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA); and to carry out its responsibility to ensure that savings associations conduct their activities in accordance with principles of safety and soundness. The purpose of these amendments is to clarify when savings associations entering into real estate-related financial transactions must employ the services of State certified or licensed appraisers to comply with title XI of FIRREA and/or the principles of safety and soundness.

EFFECTIVE DATE: This final rule is effective on April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Diana Garmus, Deputy Assistant Director, Supervisory Operations, (202) 906–5683; Robert Fishman, Program Manager for Credit Risk, (202) 906–5672, Supervision Policy; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906–7133, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of FIRREA, 12 U.S.C. 3331 *et seq.*, directed the OTS, and the other federal financial institutions regulatory agencies ("agencies"),[1] to publish appraisal rules for federally related transactions within the jurisdiction of each agency. In accordance with statutory requirements and in coordination with the other agencies, the OTS published an appraisal rule which established minimum standards for appraisals used in connection with federally related transactions and identified those federally related transactions that require a State certified appraiser and those that require either a State certified or licensed appraiser. The final rule was published on August 23, 1990 (55 FR 34533). The OTS's final rule, along with those of the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the National Credit Union Administration ("NCUA"), and the Resolution Trust Corporation ("RTC"), established a threshold level of $50,000 at or below which appraisals are not required for federally related transactions. 12 CFR 564.3(a) (OTS); 12 CFR 34.43 (OCC); 12 CFR 323.3 (FDIC); 12 CFR 722.3 (NCUA); 12 CFR 1608.3 (RTC).[2] However, transactions below

[1] These other agencies are: the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), and the National Credit Union Administration ("NCUA"). In addition, the Resolution Trust Corporation has issued appraisal rules under Title XI of FIRREA.

[2] In its final appraisal rule, published on July 5, 1990, 55 FR 27762, the Board established a threshold level of $100,000, at or below which an appraisal would not be required. 12 CFR 225.63. On November 28, 1990, the Board proposed amending its appraisal regulation to change its threshold level to $50,000. 55 FR 49057 (Nov. 26, 1990). The Board has not yet issued an final response to this notice of proposed rulemaking.

the threshold are expected to have an evaluation pursuant to guidelines to be issued by the OTS and the other agencies. Id.

On December 31, 1991, (56 FR 67548), the OTS published a proposal to amend its appraisal regulation to increase from $50,000 to $100,000 the threshold above which the services of certified and licensed appraisers would be required in connection with real estate-related financial transactions involving savings associations; and to add a definition of "real estate" and "real property" to clarify that the appraisal regulation does not apply to mineral rights, timber rights, or growing crops. The OCC, the FDIC, and the RTC had already proposed similar amendments to their appraisal regulations. See 56 FR 42546 (August 28, 1991) (OCC); 56 FR 47035 (September 17, 1991) (FDIC); and 56 FR 47164 (September 18, 1991) (RTC).[3] The FDIC finalized its proposal on March 16, 1992 (57 FR 9043).[4]

The proposal also responded to a petition that the OTS had received from the American Institute of Real Estate Appraisers ("AIREA"), the Society of Real Estate Appraisers, and the International Right of Way Association ("petitioners"), requesting that the OTS reopen its earlier rulemaking to amend the appraisal regulation by, *inter alia*, reducing or eliminating the *de minimis* threshold. The proposal effectively granted the petitioners' request to reopen the rulemaking regarding the appropriateness of the threshold level and notified the public of the petitioners' claims regarding the appraisal regulation. (56 FR 67549–50).

The OTS is issuing this final rule under its authority to issue rules to implement title XI of FIRREA and its authority to prescribe rules and regulations to carry out its responsibility to ensure that savings associations conduct their activities in accordance with principles of safety and soundness. See 12 U.S.C. 1462 *et seq*. The purpose of these amendments is to clarify when savings associations must use State certified and licensed appraisers to comply with title XI of FIRREA and/or principles of safety and soundness.

The OTS is also issuing this final rule in an effort to maintain uniformity of regulation among the financial institution regulatory agencies.[5] Title XI of FIRREA encouraged uniform appraisal rules among the agencies. The OTS also believes that such uniformity enhances regulated institutions' ability to compete on an equal basis, because all institutions are subject to the same appraisal requirements and do not suffer any competitive disadvantage. The OCC and the RTC are proposing to raise the threshold level at or below which appraisals are not required to $100,000, and the FDIC's and the Board's appraisal regulations currently provide for $100,000 threshold levels. Because the OTS believes that all regulated institutions should be subject to uniform appraisal requirements and has concluded that the change may be made consistent with safety and soundness, it is also amending its regulation to raise to $100,000 the threshold level at or below which appraisals are not required.

II. Comments on the Proposed Rule and OTS Response

The OTS received 78 comment letters on the proposed amendments to its appraisal rule. Of these, 10 letters were from savings associations and federal savings banks while 48 letters were from appraisers and appraisal organizations. In addition, there were 2 letters from appraisers also holding officer positions with federal savings banks, 7 letters from trade associations, 1 letter from a government agency, and 10 letters form other individuals. The primary issues addressed by the commenters are discussed below.

A. De Minimis Threshold

Virtually all 78 comments received by OTS addressed the proposal to increase the threshold level from $50,000 to $100,000. While 12 commenters favored increasing the threshold level to $100,000, 65 commenters favored retaining the $50,000 threshold. Of those 65 commenters opposed to the increase, 50 were appraisers, 9 were individuals, 3 were trade associations, and 2 were savings associations. One commenter expressed no opinion as to whether or not it favored increasing the threshold. Eight out of 10 of the commenting savings institutions favored raising the threshold to $100,000.

1. Authority to Establish a Threshold

Appraisers and appraiser associations argued that the intent of title XI of FIRREA would be defeated by establishing a $100,000 threshold level at or below which real estate-related financial transactions would not require the services of an appraiser and questioned the OTS's authority to establish such a level. As discussed below, the OTS disagrees with these assertions.

Title XI of FIRREA establishes a framework for regulating appraisals and appraiser services used in connection with certain transactions involving real estate, identified in the legislation as "federally related transactions." Section 1121 of FIRREA, 12 U.S.C. 3350, defines a "federally related transaction" as a real estate-related financial transaction which, *inter alia*, requires the services of an appraiser. Consequently, by the plain language of the definitions in title XI of FIRREA, "real estate-related financial transactions" and "federally related transactions" are not legally equivalent to each other. Instead, "federally related transactions" are a subset of "real estate-related financial transactions" with one of the distinguishing factors being whether the services of an appraiser are required in connection with the transaction.

Title XI of FIRREA does not state when the services of an appraiser are required in connection with a real estate-related financial transaction. However, the legislation does state that its purpose is to protect "federal financial and public policy interests" in real estate related transactions. See section 1101 of FIRREA, 12 U.S.C. 3331.

The legislation and the committee reports issued in conjunction with title XI of FIRREA make clear that these federal financial and public policy interests include reducing losses to the deposit insurance funds due to faulty and fraudulent appraisals used in connection with real estate-related financial transactions, improving the professional conduct and supervision of appraisers, and ensuring the stability of the residential mortgage markets. These interests parallel the OTS's broader concern that savings associations engage in safe and sound practices when conducting their activities. See 12 U.S.C. 1462a, 1463, 1464.

In determining which real estate-related financial transactions should require appraisals, the OTS therefore examined whether the services of an appraiser were necessary to protect

[3] The OCC and the FDIC also proposed an amendment to their appraisal regulations to permit the use of appraisals prepared for loans insured or guaranteed by an agency of the federal government if the appraisal conforms to the requirements of the federal insurer or guarantor. OTS regulations already provide for the use of valuations prepared for loans made pursuant ot certain federally insured and guaranteed loan programs. See 12 CFR 541.13, 541.17, 545.32, 563.170.

[4] The FDIC also amended its appraisal regulation to allow regulated institutions to exempt appraisals of 1-to-4 family residential properties prepared in accordance with Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC) appraisal standards from certain appraisal standards in its rule. See 12 CFR 323.4(b). The OTS already has a similar provision in effect. See 12 CFR 564.8(d).

[5] All the agencies, except the NCUA, have adopted or are in the process of adopting a $100,000 threshold level, at or below which an appraisal is not required.

federal financial and public policy intrests in particular transactions, and as a matter of safe and sound practice. Using this approach, the OTS concluded that neither title XI of FIRREA nor principles of safety and soundness require the use of appraisers in connection with all real estate-related financial transactions.

The OTS's authority to determine which real estate-related financial transactions require the services of an appraiser must be guided and limited by the purposes of title XI of FIRREA and the principles of safety and soundness. Consequently, the authority to make that determination does not render the legislation a nullity.

In sum, the OTS believes that the establishment of a threshold level below which savings associations need not obtain the services of an appraiser when entering into real estate-related financial transactions meets the letter and intent of title XI of FIRREA, fully satisfies the principles of safety and soundness, and minimizes costs to consumers without substantially increasing the risk of loss to the deposit insurance fund.

2. Certified or Licensed Appraisers Not Required for Evaluations

Several commenters stated that title XI of FIRREA should be read to mean that any evaluation of real estate collateral undertaken by or on behalf of a savings association requires the services of an appraiser, or that the services of an appraiser must be obtained for all transactions covered by the guidelines to be issued by the OTS.

Passage of title XI of FIRREA established a new standard for appraisals (an appraisal must be in writing and conform to the Uniform Standards of Professional Appraisal Practice established by the Appraisal Standards Board of the Appraisal Foundation) as well as new requirements for those who perform appraisal services in connection with federally related transactions (appraisers must be certified or licensed by the States). The statute, however, did not impose these requirements on all real estate-related financial transactions.

By explicitly recognizing that appraisals and the services of an appraiser are not required for all real estate-related financial transactions, title XI of FIRREA permits evaluations of real estate that are not performed by appraisers. An evaluation is an assessment of the probable value of a property that does not necessarily satisfy all the standards for an appraisal as set forth in the OTS's regulations, 12 CFR 564.4. It is performed by an individual who has the knowledge and experience necessary to make an informed assessment of the property's value, but who is not expected to render an appraisal of the property.

Just as title XI of FIRREA does not require the use of appraisers in connection with all real estate-related financial transactions, it does not provide that the only persons who may evaluate real estate collateral are appraisers. Clearly savings association personnel and others have long provided reliable evaluations in connection with lending activities. To the extent that title XI requires a change in this practice, the change is mandated only where the services of an appraiser are necessary to protect federal financial and public policy interests in the real estate-related financial transaction involved.

The OTS has incorporated this distinction in its appraisal regulation and has identified certain real estate-related financial transactions which it believes do not require appraisals or the services of an appraiser under title XI of FIRREA or to satisfy the principles of safety and soundness. Nevertheless, even when the services of an appraiser are not required in connection with a real estate-related financial transaction, principles of safety and soundness dictate that a savings association evaluate the real estate collateral to obtain some verification of the value of the real estate involved in the transaction. The OTS believes that for such transactions, the use of evaluations meets the purposes of Title XI of FIRREA, satisfies the principles of safety and soundness, reduces regulatory burden, and minimizes costs for savings associations and borrowers, especially in the residential mortgage market.

3. Amount of the Threshold Level

As stated earlier, of the approximately 78 comment letters received, 12 favored increasing the threshold level to $100,000, while 65 favored retaining the $50,000 threshold.

Commenters favoring an increase in the threshold level were primarily savings institutions. Of the savings institutions that commented, 8 of 10 commenters favored raising the threshold level to $100,000. Many commenters stated that their institutions had experienced very low levels of losses in connection with real estate-related financial transactions below $100,000. Commenters stated that the majority of their losses associated with real estate-related financial transactions occurred in connection with loans greater than $100,000. Furthermore, some commenters asserted that the losses did not result from faulty or fraudulent appraisals, but rather from other factors, including general economic decline.

Comments opposing the increase in the threshold, or suggesting that it be lowered, were primarily from appraisal organizations and individual appraisers. All appraisers and appraisal organizations that commented on the proposal opposed raising the threshold, many using identical language containing broad assertions concerning the current condition of the appraisal and thrift industries. Many of the commenters opposing the increase expressed the belief that it would be inappropriate to increase the threshold level from $50,000 to $100,000, alleging that there were high levels of losses experienced by insured depository institutions on real estate loans, including loans below the proposed $100,000 threshold. These commenters, however, did not substantiate their claims with any verifiable data or documentation.

The OTS requested that financial institutions commenting on the proposal to increase the threshold from $50,000 to $100,000 include specific information about the losses sustained on loans of $50,000 or less, of $50,001 to $100,000, and of more than $100,000. As discussed below, the only specific loss data provided in the comment letters from savings associations indicates that savings associations have not suffered high levels of losses on loans of $100,000 or less.

The OTS also requested that comments from financial institutions specifically address the estimated cost and delay in obtaining appraisals: (1) Prior to August 23, 1990; (2) since August 23, 1990; and (3) if applicable, after savings associations are required to use certified and licensed appraisers for all federally related transactions.

After carefully considering information provided on loss experience by the commentes, data from Thrift Financial Reports, and the experience gained in examining savings associations, the OTS believes that $100,000 is an appropriate threshold. The OTS believes that any losses experienced by savings associations on transactions below this level do not implicate federal financial or public policy interests and that the threshold level can be raised consistent with safety and soundness.

In this regard, it is important to note that even though the OTS is increasing its threshold to $100,000, the OTS is still requiring savings associations to obtain reliable evaluations conducted by

competent individuals in connection with real estate-related transactions of $100,000 or less. See 12 CFR 564.3(a).

Reported loss experience. Five savings institutions responded to the request for specific loss experience as follows: The first savings association indicated that 95% of its transactions were below $100,000 and that it had not experienced substantial losses from loan transactions below that amount and urged raising the threshold.

A second savings institution described itself as a $135,000,000 thrift with $105,000,000 of real estate-related loans and stated that it had experienced no losses in the last 12-month period. In the past 60 months, this institution had experienced no more than 4 or 5 foreclosure actions, with no losses incurred, except one involving a loan of $400,000 for a commercial property. All residential real estate loans remained current or had not resulted in any losses. The institution also stated that foreclosures general tended to have been on properties where the transaction amount was less than $50,000, and that any losses were unrelated to appraisal problems. This institution also urged raising the threshold.

A third savings association with total assets of $36,600,00 reported that as of December, 1991, it held: (1) 459 real estate-related loans in the less than $50,000 category totaling $7,608,450 with 4 losses totaling $14,400; (2) 54 loans in the $50,000–$100,000 category totaling $3,625,096 with 0 losses; and (3) 25 loans in the over-$100,000 category totaling $16,354,659 with 5 losses in the amount of $24,400. This association also urged raising the threshold.

A fourth savings bank found, after reviewing its loss experience of the previous two years, that there had actually been a decrease in the number of losses in the $50,000–$100,000 loan category. Its loss experience was greater in dollar volume for real estate loans over $200,000 and in numbers of losses for those loans under $30,000. This institution explained that its loss experience on higher loans was caused by the greater number of high risk commercial properties and residential non-owner occupied investment properties in the above-$100,000 loan category as well as by the limited number of buyers for higher priced residential properties. This institution believed that its increased loss experience for low balance loans could be explained by the job instability of low income borrowers and by the location of the collateral for low income loans in areas experiencing greater decreases in property values. It believed that neither of those risk factors would be ameliorated by requiring an appraisal. This institution also supported increasing the threshold to $100,000.

A fifth savings institution indicated that in its experience, delinquency and foreclosure risks associated with loans in amounts of $100,000 or less were relatively low, and it found no significant difference in such risks between loans in the $0–$50,000 range and those in the $50,000–$100,000 range. This savings bank supported the threshold increase to $100,000.

The limited data provided by savings institutions to OTS indicates that larger loans experienced a higher loss ratio than smaller loans and that loans in the $50,000–$100,000 category experienced the lowest loss ratio.

Thrift Financial Report Data. The loan loss experience reported by the comment letters that provided data is supported in several ways by data in the Thrift Financial Reports (TFR) filed by savings associations.

The OTS has reviewed the past 8 quarters of TFR data submitted by savings associations on loan losses by asset type. This review revealed that savings associations experienced very low levels of losses on home mortgage loans. See Table A (explained in more detail below). The OTS believes that, based on its examination and supervisory experience with savings associations, real estate secured loans of $100,000 or less are primarily home mortgage loans. The low levels of losses revealed by the TFR data were corroborated by the comments from the savings associations that they had experienced low levels of losses on real estate loans below the proposed threshold of $100,000. The assertion that real estate secured loans of $100,000 or less are primarily for home mortgages is confirmed by many of the appraiser commenters who asserted that over half of residential mortgage transactions would fall below $100,000.

The level of capital required under the risk based capital standard further ensures that savings associations will not be adversely afffected by losses on home mortgage loans. This conclusion is supported by a comparison of TFR loan loss data to the capital that associations are required to hold under the risk based capital standard.

When savings associations engage in real estate related financial transactions, such as real estate lending, they must support that activity with capital. See 12 CFR part 567. Savings associations currently must hold aggregate capital equal to 7.2% of their loans that involve other single family residential properties and 3.6% of their loans that involve single family residential property. These requirements are scheduled to increase to 8% and 4%, respectively, on December 31, 1992.

The OTS developed Table A from information provided in the TFRs. The first two columns show asset type and the average thrift holdings by asset type. This data indicates that thrift assets are heavily concentrated in single family permanent (non-construction) mortgages. The third column shows average annual net losses as a percentage of the average total dollar amount invested in the different types of loans. The fourth column in Table A was derived by dividing the amount of capital that thrifts are required to hold against each asset type under the risk-based capital rule by the annual net losses experienced by thrifts for each asset type. For example, for single family residential properties, the table divides 3.6% (the current capital requirement) by 6 basis points (the net loss experience) to get 60. This implies that an association would have to suffer 60 times the average annual loss experience on single family home loans to deplete its capital cushion and potentially impact the deposit insurance fund.

TABLE A

Asset Type	Average thrift holdings (billions)	Annual net losses (percent of holdings)	Risk-based capital requirement/ annual net losses
Single family construction loans	$12.3	0.72	10
Multifamily construction loans	3.6	1.46	4.9
Nonresidential properties construction loans	4.1	4.38	1.6
Single family permanent mortgages	389.4	0.06	60

TABLE A—Continued

Asset Type	Average thrift holdings (billions)	Annual net losses (percent of holdings)	Risk-based capital requirement/annual net losses
Home equity lines of credit	7.2	0.12	60
Multifamily permanent mortgages	54.5	0.62	11.6
Nonresidential permanent mortgages	54.4	1.21	5.95
Land loans	7.9	1.15	6.26

Average Thrift Holdings and Annual Net Losses data calculated from Thrift Financial Report data from 3/31/90 through 12/31/91.

As Table A shows, losses on single family residential loans, which are expected to make up the largest part of all loans of $100,000 or less, would be absorbed easily by the capital which the savings association must hold against those loans under current regulations. The analysis set forth above demonstrates that any losses attributable to transactions of $100,000 or less would be absorbed by capital and would not adversely affect the deposit insurance fund or federal financial and public policy interests.

Bank data. Although the OTS did not receive a large number of comment letters containing loan loss experience from savings institutions, the OCC and the FDIC, in response to similar proposed rulemakings, received significant data from banks demonstrating the low risk of smaller loans. See FDIC final appraisal rule, Table A, 57 FR 9045 (March 1, 1992); OCC final appraisal rule, Table A, (The **Federal Register** of April 9, 1992). The data received by both the OCC and the FDIC indicates that loans above $100,000 experience a higher loss ratio than loans in the $50,000–$100,000 category. Moreover, the OCC and FDIC data clearly show that losses on real estate loans, as a percentage of investment, in the $50,001 to $100,000 range and in the $50,000 or less range are very similar. This lends further support to the position of the OTS that increasing the threshold to $100,000 will not pose a threat to federal financial and public policy interests.

The OTS believes that the loan loss experience demonstrated by the data recieved by the bank regulatory agencies is relevant to savings associations and incorporates by reference data and analysis supporting the FDIC and OCC final appraisal rules. Like the OTS, the bank regulatory agencies' examination and supervisory experience has been that most real estate loans of under $100,000 are single family home mortgage loans.

Further, both banks and savings associations utilize similar underwriting standards for such loans. Underwriting standards for analyzing whether to extend credit typically include limits on debt-to-income ratios, downpayment requirements, etc. One reason for this similarity in underwriting standards is that both banks and savings associations sell a large portion (over 50% in aggregate) of their eligible fixed-rate single family home loans to the Federal National Mortgage Association (FNMA) or to Federal Home Loan Mortgage Corporation (FHLMC). Even with regard to institutions that do not initially intend to sell their loans to FNMA and FHLMC, it has been the OTS supervisory experience that most institutions still use FNMA/FHLMC underwriting criteria to give themselves the flexibility to sell their loans in the secondary market at a later date. Based on the foregoing analysis, therefore, the OTS believes that banks and savings associations have similar loan loss experiences.

Reported cost and time to obtain appraisals. Commenters also were asked to provide an estimate of the cost and time necessary to obtain appraisals. Three savings institutions commented on their specific experience in obtaining appraisals, and all three indicated that the cost and time to obtain appraisals had increased since the implementation of the OTS appraisal regulation.

One association indicated that prior to the implementation of OTS's appraisal regulation, 12 CFR part 564, a normal residential appraisal could be completed within 10–12 days. The association indicated that since then, *i.e.*, August 23, 1990, there has been a steady increase in the time required for and the cost of residential appraisals, with a particularly marked increase in the past several months, due to the volume of refinancings. A second association reported that prior to the implementation of OTS's current appraisal regulation, it could carry out its valuation process of real estate valued at or below the $100,000 level within a few days and at minimal cost both to the borrower and to the institution. This association, which is located in a rural county, indicated that the requirement for use of certified and licensed appraisers will cause substantial delays both because of the shortage of such licensed and certified appraisers in its area and because appraisers from outside the area will be unfamiliar with the local market and will require more time to perform their appraisals. A third savings bank also commented that, since state licensing requirements had become effective, identical appraisals were being provided at a higher cost.

Some commenters stated that title XI of FIRREA does not permit the cost of obtaining appraisals to be considered in determining whether the services of an appraiser are required for any class of real estate-related financial transactions. Nothing in title XI, however, precludes consideration of cost or delay in obtaining appraisal services in determining whether the services of an appraiser are required to protect federal financial and public policy interests.

Reliability of the data. A few comment letters objected to basing any conclusion about the level of the threshold on data provided in the comment letters. One letter stated that the data obtained would be unscientific because it was voluntarily provided and might not represent the experience of the thrift industry as a whole. The OTS believes that the data provided by the commenters is representative of the experience of thrifts and it has generally confirmed the results shown by the data through the use of data collected on all savings associations in the TFRs.

Loss experience of mortgage insurers. Some commenters stated the opinion that savings associations would suffer substantial losses on loans below $100,000. For example, citing $873 million in losses on 57,000 claims paid by its members in 1989, an association of mortgage insurance companies opposed any increase in the threshold level and stated that the majority of the losses experienced by its members had occurred on properties valued less than $100,000. The association also stated its

belief that inadequately trained appraisers were the cause of a large part of the losses suffered by its membership. Several other commenters echoed these conclusions in opposing the proposal to increase the threshold level.

However, commenting savings associations expressed the opinion that losses on foreclosed properties were more directly related to other factors, such as deterioration of the local real estate market, rather than to the inadequacy of the appraisal or evaluation obtained when the loan was originated.

The OTS notes that the mortgage insurers' data is reflective of loss experience on residential mortgage loans that have mortgage insurance. Such loans are typically high loan-to-value ratio loans, which are riskier in general than low loan-to-value ratio loans. As such, the mortgage insurers' data may be representative of the loss experience of only high risk home mortgage loans. The mortgage insurers have not demonstrated that their loss experience, which is based on a limited group of loans that they insure, is representative of the loss experience of the thrift industry as a whole.

The OTS further notes that as a result of the passage of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), the Office of Management and Budget ("OMB") is conducting a study of whether there is a need to establish *de minimis* levels for commercial real estate. The OTS will evaluate the information provided in that study to determine whether any further changes are required in this rule.

Effect of the use of evaluations on reported loss experience. A large number of appraisers commented that approximately 50 percent of all home mortgages would be below the $100,000 threshold level given the current median price of housing in the United States. These commenters suggested that because the services of a certified or licensed appraiser will not be required in connection with these loans, the losses attributable to these transactions will rise, even if savings associations obtain evaluations of the real estate collateral for these loans as a matter of safe and sound banking practice.

Evaluations for transactions below the threshold level, as well as for any real estate-related financial transaction which does not require the services of an appraiser under the appraisal regulation, must provide information that allows a savings association to determine whether its participation in the transaction is consistent with the principles of safe and sound banking. Therefore, the OTS does not expect the losses associated with these transactions to change materially as a result of the use of evaluations at the time the loans are made. However, the OTS will monitor all aspects of the appraisal rule and will review the appropriateness of the threshold level if further experience shows that changes are necessary.

Past loss experience as reliable gauge of future losses. In opposing the increase in the threshold level, one commenter stated that past loss experience is not an accurate measure of future losses or acceptable losses. The OTS believes an analysis of past losses by real estate loan type, in conjunction with other factors, is an appropriate gauge for potential future losses.

Intent of the statute regarding certified and licensed appraisers. Several commenters stated that title XI of FIRREA intends the broadest possible use of certified and licensed appraisers. However, the intent of the legislation must be read in light of its purpose—to protect federal financial and public policy interests in federally related transactions. Accordingly, the OTS has required the most appropriate use of certified and licensed appraisers necessary to meet this purpose.

Furthermore, the OTS favors the development of certification and licensing programs by the States and the use of certified and licensed appraisers in connection with all real estate-related financial transactions. However, for the reasons discussed above, the OTS has not mandated the use of certified and licensed appraisers for all real estate-related financial transactions.

Protection of consumers. Several appraisers stated that the $50,000 threshold should be retained as a means of protecting consumers from paying too much when purchasing a home. At the same time, savings associations have stated that the cost and time delays associated with requiring compliance with the appraisal regulation have hurt consumers. Both issues could be important considerations for homebuyers.

Clearly, homebuyers can obtain an appraisal by a certified or licensed appraiser prior to purchasing a house, or request that a savings association obtain an appraisal by a certified or licensed appraiser in connection with any real estate-related financial transaction. However, the focus to Title XI of FIRREA is to prevent losses to the deposit insurance fund resulting from faulty of fraudulent appraisals. The OTS believes that Congress did not intend to require an appraisal by a certified or licensed appraiser as a condition to purchasing or financing a home.

Conflict with policies of other federal agencies. Several commenters objected to increasing the threshold level to $100,000, stating that it would conflict with the policies being adopted by "federal housing assistance agencies" such as FNMA, FHLMC, the Department of Housing and Urban Development (HUD), and the Department of Veterans Affairs (VA). There is no conflict. To the extent that an institution desires to participate in the HUD or VA mortgage insurance programs, or to sell mortgage loans to FNMA or FHLMC, it will have to comply with the requirements established by those agencies. The raising of the threshold level, therefore, does not create a conflict, but merely streamlines the appraisal procedures to be followed by an institution. See also OTS regulations, 12 CFR 545.32, 563.170, which provide for the use of valuations prepared for loans made pursuant to certain federally insured and guaranteed loan programs.

Ensuring independent judgment when obtaining evaluations. Several commenters suggested that the threshold should not be increased because individuals preparing evaluations could be pressured into reporting a particular value to meet the requirements for a loan. Others suggested that it was important to have an appraiser provided an independent verification of the value of real estate offered as collateral since the compensation of real estate agents and loan officers frequently depends upon the completion of the transaction and the amount involved. However, the OTS expects savings associations, as a matter of safe and sound practice, to adopt procedures to ensure that the evaluations they receive are provided by individuals who are both independent and competent to perform the evaluation. These individuals should not be under any pressure to report a specific value or minimum value. The savings association's procedures would apply to association personnel, as well as individuals providing evaluations to the association on a fee basis.

Additional benefits from the participation of appraisers. Several commenters identified other benefits, such as consideration of the highest and best use for the property and identification of hazardous waste problems associated with the property, conferred by appraisers' participation in real estate transactions. While the OTS encourages savings associations to use certified or licensed appraisers for transactions below the threshold level, the possibility that appraisers may be able to offer benefits not necessary to

meet the requirements of title XI of FIRREA, or to satisfy the principles of safe and sound practice, is not a sufficient reason for mandating the services of an appraiser in connection with all transactions below the threshold level.

The need for professionalism among appraisers. A number of appraisers stated that increasing the threshold sends the wrong message regarding the need for professionalism in the appraisal industry and undermines the Congressional purpose of improving appraisal services. The OTS believes that the opposite is true and the OTS has strongly endorsed increased professionalism among appraisers both before and after the enactment of title XI of FIRREA.

Under the appraisal regulation, the services of a professional appraiser are required where the risk is greatest, where the problems of valuing the real estate are most complex, and where the appraiser's experience and training can help bankers arrive at a thorough understanding of the value of the real estate collateral. This information will allow thrift managers to analyze accurately the risks associated with underwriting those loans. By contrast, evaluations by competent individuals are permitted for transactions below $100,000, where savings associations have suffered lower levels of losses and where the issues involved do not demand the level of training and experience required of a certified or licensed appraiser.

B. Definition Of Real Estate And Real Property

The OTS also is adding a definition of "real estate" and "real property" to § 564.2. Title XI of FIRREA does not define "real estate" or "real property" nor does the context in which these terms are used suggest that the terms are intended to have different technical meanings. For instance, "real estate-related financial transaction" is defined as

> any transaction involving (A) the sale, lease, purchase, investment in or exchange of *real property*, including interests in property, or the financing thereof; (B) the refinancing of *real property* or interests in *real property*; and the use of *real property* or interests in *real property* as security for a loan or investment, including mortgage-backed securities.

FIRREA, section 1121(5), 12 U.S.C. 3350 (emphasis added).

Title XI of FIRREA also directs the OTS to issue regulations requiring "that *real estate appraisals* be performed in accordance with generally accepted appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation." (Emphasis added.)

The Appraisal Foundation's standards, referred to as the Uniform Standards of Professional Appraisal Practice ("USPAP"), have separate definitions for "real property" ("the interest, benefits, and rights inherent in the ownership of real estate") and "real estate" ("an identified parcel or tract of land, including improvements, if any"). The USPAP also recognizes that the terms are used interchangeably in some jurisdictions.

The OTS used "real property" and "real estate" interchangeably throughout the appraisal rule to mean interests in an identified parcel or tract of land and improvements. However, the OTS did not intend these terms to include mineral rights, timber rights, or growing crops when they are considered separately from the parcel or tract of land. Valuation of such interests generally requires the services of a professional other than an appraiser.

To clarify this distinction, the OTS proposed to define "real property" and "real estate" for purposes of the appraisal regulation as "an identified parcel or tract of land, including easements, rights of way, undivided or future interests and similar rights in a tract of land, but excluding mineral rights, timber rights, or growing crops."

The OTS received 3 comments on this change to the appraisal regulation. Two commenters supported the amendment on the grounds that valuation of mineral rights, timber rights, or growing crops required the services of a professional other than a real estate appraiser. One commenter opposed the amendment based on its conclusion that the definition would have the effect of removing from the definition of real estate or real property any parcel or tract of land with mineral rights, timber rights, or growing crops. This was not the OTS's intent.

In many states, minerals, timber, and growing crops which have not been severed from the land are considered interests in real estate or real property. Consequently, if mineral rights are collateral for a loan in one of those states, a question arises as to whether the savings association must obtain an appraisal of the parcel or tract of land to which the mineral rights are attached, but in which the association has no interest, in order to satisfy the requirements of part 564.

The final rule clarifies that savings associations are not required to obtain appraisals of the parcel of land to which mineral rights or similar severable interests in real estate are attached, if the transaction only involves the severable interest rather than the parcel or tract of land. The OTS has also broadened the exclusion to cover other natural constituents of the real estate which are severable from the land such as water rights. Where mineral rights, timber rights, or growing crops, and the associated parcel or tract of land are the subject of a real estate-related financial transaction, then the services of an appraiser would be required in connection with that transaction unless one of the provisions in § 564.3(a) applies.

In addition, the contribution of relevant mineral rights, timber rights, or growing crops should be included when appraising a parcel of land which possesses any of these features. However, valuation of these interests would not be required if they are not part of the transaction, or if they are not relevant to the analyses which the appraiser needs to perform to arrive at an estimate of value for the parcel or tract of land.

The definition adopted in the final rule has been changed to clarify that mineral rights, timber rights, or growing crops, and other severable interests in a parcel or tract of land are excluded from the definition of real estate when the transaction involves only those interests.

The definition in the final rule has also been modified to make it clear that improvements to the parcel or tract of land are considered part of the real estate or real property and must be included in the appraisal.

III. Technical Amendments

The OTS is making three technical amendments to the appraisal regulation. The OTS finds that these amendments are technical in nature and, therefore, that public notice and an opportunity to comment on them is unnecessary. See 5 U.S.C. 553(b)(B).

A. Clarification of Which Transactions Require the Services of an Appraiser

In an effort to clarify which transactions require the services of an appraiser, the OTS has included a technical amendment to § 564.3(a) to indicate that the services of an appraiser are required for all real estate-related financial transactions except those identified in that section.

B. Clarification of the Abundance of Caution Exception

In an effort to clarify the applicability of the abundance of caution exception in § 564.3(a)(2), the OTS is amending the regulation to indicate that the

abundance of caution exemption is available even though an association does not take a lien against the real estate involved. The OTS did not intend to require appraisals for unsecured real estate-related financial transactions that would qualify for the abundance of caution exemption if the association had taken a lien against the real estate.

This technical amendment is for clarification only and does not increase the categories of transactions to which the abundance of caution exemption applies. The abundance of caution exemption continues to apply to real estate-related financial transactions in which the association's position is fully protected by other collateral, or in which the borrower is worthy of unsecured credit, regardless of whether the association takes a lien against the real estate involved.

When the association takes a lien against the real estate collateral without obtaining an appraisal of the collateral, the OTS may conclude that the regulation has been violated unless the association would make the loan on the same terms without the real estate lien. When the association does not take a lien against the real estate which is the subject of the transaction, the OTS may conclude that the regulation has been violated if the association's position is not adequately protected by other collateral or if the borrower is not worthy of unsecured credit.

C. Effect of Section 472(b)(1) of FDICIA

Section 472(b)(1) of FDICIA amended section 1119(a)(1) of FIRREA, 12 U.S.C. 3348(a)(1), to delay the date by which regulated institutions must use certified or licensed appraisers from December 31, 1991 to December 31, 1992. The OTS is adopting a technical amendment to confirm that the OTS has delayed until December 31, 1992 the date by which savings associations must use certified and licensed appraisers for all federally related transactions.

It is not a violation of the OTS appraisal regulation for a savings association to obtain appraisal services prior to December 31, 1992 from an individual who is not a State certified or licensed appraiser. However, savings associations still must determine whether State law requires the use of State certified or licensed appraisers in connection with transactions prior to December 31, 1992.

IV. Waiver of Delayed Effective Date

This final rule is effective on April 13, 1992. The 30-day delayed effective date required under the Administrative Procedure Act ("APA") is waived pursuant to 5 U.S.C. 553(d)(1) which provides for waiver when a substantive rule "grants or recognizes an exemption or relieves a restriction." The amendments adopted in this final rule exempt additional transactions from the appraisal regulation and provide technical clarifications which have the effect of relieving perceived restrictions. Consequently, all amendments in this final rule meet the requirements for waiver set forth in the APA.

V. Regulatory Flexibility Act; Executive Order 12291

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Director of the OTS certifies that these changes are not expected to have a significant economic impact on a substantial number of small entities.

The OTS also has determined that these amendments do not constitute a "major rule" within the meaning of Executive Order 12291 and Treasury Department Guidelines. Accordingly, a Regulatory Impact Analysis is not required on the grounds that the proposed regulation, if adopted:

(1) Would not have an annual effect on the economy of $100 million or more,

(2) Would not result in a major increase in the cost of thrift operations or governmental supervision, and

(3) Would not have a significant adverse effect on competition, employment, investment, productivity, or innovation, within the meaning of the executive order.

Overall, the OTS expects the changes to benefit consumers and savings associations regardless of size by reducing costs without increasing the risk of loss to the deposit insurance fund.

VI. Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the OMB under control number 1550-0011 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The estimated average annual burden associated with the collection of information in this final rule is 78 hours per recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

Total Burden: 2200 recordkeepers×78 hours=171,600 total burden hours.

List of Subjects in 12 CFR Part 564

Appraisals, Mortgages, Real estate appraisal, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, The Office of Thrift Supervision hereby proposes to amend part 564, subchapter D, chapter V, title 12 of the Code of Federal Regulations, as follows:

PART 564—APPRAISALS

1. The authority citation for part 564 is revised to read as follows:

Authority: Title XI, Pub. L. 101-73, 103 Stat. 511 (1989) (12 U.S.C. 3331 *et seq.*); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3 as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 208 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 18(m), 64 Stat. 873, as added by sec. 221, 103 Stat. 267 (12 U.S.C. 1828(m)); title IV, Pub. L. 102-242, sec. 472, 105 Stat. 2386 (12 U.S.C. 3348).

2. Section 564.2 is amended by redesignating paragraphs (g) through (k) as paragraphs (h) through (l), respectively, and by adding a new paragraph (g) to read as follows:

§ 564.2 Definitions.

* * * * *

(g) *Real estate* or *real property* means an identified parcel or tract of land, with improvements, and includes easements, rights of way, undivided or future interests, or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights, or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

* * * * *

3. Section 564.3 is amended by revising the section heading, paragraphs (a) heading, (a) introductory text, and (a) (1) and (2); and by adding a new paragraph (d) to read as follows:

§ 564.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* While supervisory guidelines, general financial institution operating practices, or other prudent standards may also require an appraisal evaluation of real property collateral, an appraisal performed by a State certified or licensed appraiser in accordance with this part is required [1]

[1] Appraisals pursuant to this part are not required for loans made pursuant to certain federally insured or guaranteed programs as set forth in §§ 545.32 and 563.170 of this chapter.

for all real estate-related financial transactions except those in which:

(1) The transaction value is $100,000 or less;

(2) Either:

(i) A lien on real property has been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien; or

(ii) The regulated institution has not taken as collateral a lien on real property and either the institution is fully protected by other collateral, or the borrower qualifies for unsecured credit;

* * * * *

(d) *Effective date.* Savings associations are required to use State certified or licensed appraisers as set forth in this part no later than December 31, 1992.

Dated: March 31, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-7963 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 567

[No. 92-135]

RIN 1550-AA40

Regulatory Capital: Residential Bridge Loans

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is revising its risk-based capital regulation to include in the 50 percent risk-weight category certain construction loans to finance the building of pre-sold, 1–4 family residences. Only those loans made in accordance with sound lending principles to builders with substantial project equity would qualify for the 50 percent risk-weight. To qualify for the 50 percent risk-weight category, the loans must satisfy specific prudential criteria and conservative underwriting standards. Included in these criteria is the requirement that a builder must have substantial equity at risk in the construction project. In addition, the homes generally will be required to be sold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgages. The home buyer also must have made a substantial earnest money deposit. This regulatory amendment is intended to facilitate lending to creditworthy builders to finance the construction of pre-sold homes.

EFFECTIVE DATE: May 13, 1992.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Program Manager, Capital Policy, (202) 906–6465, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On December 17, 1991,[1] OTS proposed to amend its capital rule, 12 CFR part 567, (the "Proposal") by placing certain conservatively underwritten residential construction loans ("residential bridge loans") in the 50 percent risk-weight category in computing risk-based capital requirements. Such loans are currently in the 100 percent risk-weight category.

Loans to individuals to fund construction of their own homes are already included in the 50 percent category under the risk-based capital rules of the Office of the Comptroller of the Currency ("OCC") and the OTS. The proposed amendment would give parallel treatment to qualifying residential bridge loans made directly to builders for the construction of pre-sold homes. The other federal banking agencies are considering adoption of similar capital treatment for these types of loans.

Supervisory Experience

In general, supervisory experience and available data suggest that single-family residential construction loans experience lower loss rates than either acquisition and development loans for residential property or construction loans for multifamily and commercial real estate properties. Furthermore, experience suggests that institutions can reduce losses significantly on residential construction through adherence to the prudential lending criteria set forth in this rule.

Data for residential construction lending from the Thrift Financial Reports for the six quarters ending June 30, 1991 show that savings associations experienced average charge-offs on 1–4 family residential construction loans of 0.60 percent of such loans over that period. This compares favorably with charge-off rates on multifamily construction lending and non-residential construction lending of 1.62 percent and 2.7 percent, respectively.

Furthermore, the 1–4 family residential construction lending category includes higher-risk loans such as loans for large tract construction, speculative construction, and some land development loans. This broader category, therefore, is a riskier category of lending than would be eligible for the 50 percent risk-weight category under this rule. Moreover, residential bridge loans that are supported by firm purchase contracts and substantial purchaser earnest money deposits contain elements of safety that are not present in speculative and tract development lending. Consequently, the OTS anticipates that loss rates on residential bridge loans meeting the strict underwriting criteria of this rule will be significantly less than those on a typical portfolio of residential construction loans. For these reasons, the OTS has concluded that placing residential bridge loans in the 50 percent risk-weight category should provide ample capital protection against the risk of these loans.

Relationship to Section 618 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991

Section 618 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991[2] directs the OTS and the other banking agencies to place certain pre-sold, single-family construction loans and multifamily housing loans in the 50 percent risk-weight category for the purpose of computing risk-based capital requirements. As stated in the preamble to the Proposal, this rulemaking preceded, and was independent of, that statutory provision. Nevertheless, this final rule satisfies the residential construction loan provisions of section 618(a).

In view of the similarity between the Proposal and the provisions of section 618(a), the OTS concluded that the Proposal provided reasonable notice and basis for comment on both the Proposal and the applicable provisions of section 618(a). Accordingly, the OTS has determined that it is not necessary to publish a revised proposal for comment.

Analysis of Comments

The OTS sought comment on all aspects of the Proposal, and specifically solicited comment on the builder equity and home purchaser earnest money deposit requirements of the Proposal. In response, the OTS received 19 comment letters from savings associations, trade associations, and other companies involved in various aspects of residential construction. Key points

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[1] 56 FR 67551 (December 31, 1991)

[2] Pub. L. 102–233, 105 Stat. 1761 (Dec. 12, 1991).

made in the comments are summarized below.

Builder's Equity

The OTS specifically requested comment on the minimum amount of project equity to require a builder to have in a home construction project. The proposed rule required the builder to have project equity equal to at least 25 percent of the projected value of the residence.

Commenters generally agreed with the concept of requiring substantial "builder equity" to ensure that the builder has a sufficient financial stake in a home's construction. Most commenters, however, said that requiring a 25 percent equity position was too high and would impair the usefulness of the proposal as a means to facilitate the availability of credit to sound borrowers. These commenters generally stated that a builder equity requirement of 10–15 percent would provide adequate protection to the lender while enhancing the benefits to be derived from increasing the credit available for conservative, pre-sold residential construction.

Other commenters discussed the difficulty of defining builder equity because of the wide variation of construction practices. Recommended approaches to computing a builder's equity included limiting the loan amount to a percentage of the sales contract and defining the builder's financial stake to be the payment of some percentage of actual construction costs.

In light of these comments, the OTS has decided to modify its approach for ensuring that a builder has substantial equity at risk. Under the modified approach, a builder's financial stake will result from the combination of the following requirements. First, the builder will be required to fund a significant percentage of direct construction costs before any drawdown on the loan. Generally, this will require the builder to pay the first 10 percent of direct costs. Second, the loan will be limted to 80 percent of the sales price. Finally, the lender and builder must adhere to an acceptable funds disbursement system. With regard to the latter, the thrift will be required to disburse funds under a system designed to ensure the retention of sufficient undisbursed loan funds throughout the construction process to fund project completion. Generally, this requires use of a construction budget or cost breakdown and a reasonable funds disbursement policy. This would identify cost overruns and cause the builder at that time to cover costs overruns and other nonapproved costs not in accordance with the initial construction budget.

For example, if the sales price of the house was $100,000 and direct costs (*i.e.*, land, labor and material) were $90,000, the residential bridge loan could be for up to $80,000. The builder would be required to fund the first $9,000 of direct costs for the home's construction.

Purchaser's Earnest Money Deposit

The OTS also requested comment on the amount of earnest money deposit that home purchasers should be required to make. The Proposal required an earnest money deposit equal to 5 percent of the loan amount.

The majority of commenters stated that a 5 percent deposit was higher than necessary in light of the other criteria being imposed. Several commenters said that a large deposit requirement would hinder the usefulness of the rule change because purchasers generally will be unwilling or unable to make such a deposit. One commenter also suggested that such large, nonrefundable, "liquidated damages" provision is not permissible under California law.

The majority of commenters recommended following the customary practice of keying the earnest money to the sales price, not the loan amount. Because the sales price is a larger amount, requiring a lower percentage can result in a comparable deposit.

After considering these comments, the terms of Section 618, and the protective effects of the other criteria being imposed, the OTS has decided to modify the deposit requirements. As modified, this final rule will require a substantial earnest money deposit. This is generally expected to be at least 3 percent of the sales price.

Other Comments

A number of commenters sought clarification of whether loans financing multi-home projects would qualify as residential bridge loans under the proposal. Some commenters discussed difficulties of applying the requirements of the proposal to multi-home projects.

The OTS has decided to address this issue in its final rule by requiring that sufficient documentation be retained for each loan, as well as the home construction and sale, to demonstrate adequately compliance with the criteria of this rule. This permits loans for homes in multi-home projects to qualify as residential bridge loans on the same terms as residential bridge loans for the construction of single-home projects.

Although the separate documentation requirements may add an element of complexity for lenders and builders choosing to have loans in multi-home projects qualify as residential bridge loans, this requirement is necessary to ensure compliance with the criteria of this rule.

Furthermore, the separate documentation requirement does not resolve the difficulty of prorating joint costs of a large multi-home construction projects to individual home contracts. However, this problem, as a general matter, must also be dealt with in pricing and establishing the value of individual homes in a multi-home development. The OTS will look to the reasonableness of the proration of costs to the number of homes in a project and the contract prices for the individual homes. The OTS retains the discretion to determine that costs and builder's equity are not being pro-rated reasonably and to refuse to permit the reduced risk-weighting of related loans.

Another commenter urged the OTS to retain the flexibility to treat residential construction loans as residential bridge loans if the loans are supported by insurance contracts that guarantee completion and sale of the home at a contracted sale price. Another commenter suggested giving the reduced risk-weight to loans under certain affordable housing programs. The OTS is retaining the discretion to give the reduced risk-weight treatment to these and other conservatively underwritten residential construction loans that are demonstrated to be as safe as those meeting the specific criteria of this rule.

Several commenters noted that construction delays could be caused by requiring purchasers to have firm commitments for qualifying mortgages, particularly in multi-home projects. One commenter recommended substituting, as an alternative to a firm loan commitment, the issuance of a commitment for private mortgage insurance issued for the benefit of the permanent lender, whether or not identified as of the commitment date. This commenter noted that the determination of a mortgage insurance company to issue a mortgage insurance commitment would provide substantial assurance of the creditworthiness of the home purchaser and the value and marketability of the home under construction. The commenter asserted that reliance on such a commitment could reduce delays caused by waiting for a firm loan commitment from a permanent lender.

The OTS has determined that such a commitment may be substituted, with OTS approval, for a firm loan commitment. The existence of such an insurance commitment also will be considered as a factor to the extent

relevant when OTS weighs requests for other variances from the specified criteria of this rule.

The OTS concurs with a comment that "standard conditions precedent and subsequent" should not keep a contract from being considered firm. Such a standard condition of the purchase contract is satisfactory completion of the home by the builder in accordance with the contract. Such standard conditions, however, generally do not include conditions requiring a separate credit decision or conditions relying on the occurrence of events outside of the construction of the home (*e.g.*, sale of the purchaser's current residence).

The OTS also agrees with another commenter that the OTS should clarify that the rule will apply to 1–4 family residences, not just single family homes. This determination is consistent with the proposed actions of the other Federal banking agencies and with the OTS definition of a "qualifying mortgage loan" under the capital rules.

Several other commenters stated that there are alternatives to the percentage-of-completion schedule, such as a voucher system, that are equally safe. Under a voucher system, a lender makes disbursements to subcontractors and suppliers upon proof of satisfactory performance. The OTS will permit the use of any acceptable system requiring work to be satisfacorily completed at a preapproved cost before loan disbursements are made. The system must work together with the requirement that the lending thrift at all times retain sufficient undisbursed loan funds to finish the construction project. This means that cost overruns must be covered by the builder at the time they are identified.

Finally, one commenter urged the OTS to issue a final rule only in conjunction with the other Federal banking agencies. In order to maintain competitive equity between banks and savings associations, the OTS has worked with the other Federal banking agencies to develop parallel treatment of residential bridge loans.

Furthermore, the other Federal banking agencies are in the process of considering actions to provide parallel capital treatment to residential bridge loans. The OTS is ussuing this final rule prior to those agencies making their final determinations on the issues addressed by this rule. The OTS is working with them in considering these issues. The OTS will exercise the discretion granted to it by this rule to achieve as much harmony as possible with the final positions of the other Federal banking agencies.

The OTS has considered these and all other comments received in adopting this final rule.

Residential Bridge Loan Rule

The OTS is amending its capital regulation to place residential bridge loans in the 50 percent risk-weight category. To qualify for the 50 percent risk-weight the loans must meet the criteria specified below.

(1) The loan to the builder may not exceed 80 percent of the sales price of the pre-sold home.

(2) The loan must be secured by a first lien on the lot, house under construction, and other improvements.

(3) The lending association must disburse the loan funds under an acceptable funds disbursement system ensuring that the association retains sufficient undisbursed loan funds throughout the construction process to fund the project's completion in accordance with a reasonable initial construction budget. Under this system the builder will be required to cover any cost overruns (*i.e.*, any costs that exceed the initial construction budget) and any other costs not included in the construction budget.

(4) To ensure that the builder has significant equity at risk in the project, the builder generally must incur at least the first 10 percent of direct costs (*i.e.*, the actual costs of land, labor, and materials). If the builder owns the lot, his cost basis in the lot (not the lot's appraised value) will be used to determine his payment of direct costs related to the project.

(5) Before making the loan, the savings association must obtain documentation showing that the prospective home purchaser intends to purchase the residence and has the ability to obtain a qualifying mortgage loan sufficient to purchase the residence. Generally, the OTS will require this documentation requirement to be satisfied by the home buyer signing a firm purchase contract for the residence and obtaining a firm commitment for a qualifying mortgage loan, as defined in 12 CFR 567.1(u), from the permanent lender. The association making the construction loan could commit to make the permanent loan itself or could obtain a loan commitment from a third-party lender.

The OTS retains the discretion, however, on a case-by-case basis to allow an association to rely on a commitment for private mortgage insurance for the benefit of a permanent lender. The mortgage insurance commitment could permit classification of a loan as a residential bridge loan prior to the home purchaser obtaining a firm loan commitment. The mortgage insurer must be approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(6) The prospective home buyer must make a substantial "earnest money" deposit that would be subject to forfeiture if the buyer defaults on the contract. In general, the earnest money deposit is expected to be at least 3 percent of the sales price, and shall be held by the savings association in escrow. The terms of the escrow must provide that in the event of default, the escrow funds are first to be used to compensate the association for its losses on the residential bridge loan with any remainder being turned over to the builder for use in accordance with the terms of the contract with the home purchaser.

(7) For multi-home projects, the documentation for each loan and home sale must be sufficient to demonstrate compliance with the criteria of this rule.

(8) The loan must be made for the construction of a home on a developed building lot that is platted and bonded, or satisfies comparable requirements of the appropriate municipal authority.

(9) If at any time during the life of the construction loan any of the criteria of this rule are no longer satisfied, the association must immediately recategorize the loan at a 100 percent risk-weight and must accurately report the loan in the association's next quarterly Thrift Financial Report;

(10) The home purchaser must intend that the home will be owner-occupied;

(11) The home purchaser(s) must be an individual(s), not a partnership, joint venture, trust corporation, or any other entity (including an entity acting as a sole proprietorship) that is purchasing the home(s) for speculative purposes; and

(12) The loan must be performing and not more than 90 days past due, as the OTS requires for permanent qualifying mortgages.

(13) The loan must be made in accordance with sound lending principles. The OTS retains the discretion to determine that any loans not meeting sound lending principles must be placed in a higher risk-weight category.

The general standards of the regulation are expected to be satisfied in the manner described above. The OTS, however, retains the discretion to modify the standards on a case-by-case basis upon OTS determination that the modification would not be inconsistent with the safety and soundness objectives of this rule.

Associations must make available to OTS examiners documentation demonstrating compliance with these criteria. The OTS may, upon review of the association's residential bridge loans and related documentation, determine that such loans do not meet the criteria of this rule. Such loans would then be placed in a higher risk-weight category.

The OTS plans to revisit these standards approximately one year after the effective date of this rule to evaluate the rule's operation and whether changes are needed.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this proposal will not have a significant or disproportionate economic impact on a substantial number of small entities. Furthermore, this proposed rule would not impose any new recordkeeping or other requirements on any associations and would lower the current risk-weighting of residential bridge loans from 100 percent to 50 percent. Accordingly, a Regulatory Flexibility Act Analysis is not required.

Executive Order 12291

The Director of the OTS has determined that this proposed regulation does not meet any of the conditions set forth in Executive Order 12291 for designation as a "major rule." Consequently, a Regulatory Impact Analysis is not required.

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby amends part 567, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

1. The authority for part 567 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

2. Section 567.1 is amended by adding paragraph (jj) to read as follows:

§ 567.1 Definitions.

* * * * *

(jj) *Qualifying residential construction loan.* (1) The term qualifying residential construction loan, also referred to as a residential bridge loan, means a loan made in accordance with sound lending principles satisfying the following criteria:

(i) The builder must have substantial project equity in the home construction project;

(ii) The residence being constructed must be a 1–4 family residence pre-sold to a home purchaser;

(iii) The lending thrift, prior to the making of the qualifying residential construction loan, must obtain sufficient documentation from a permanent lender (which may be the construction lender) demonstrating that:

(A) The home buyer intends to purchase the residence; and

(B) Has the ability to obtain a permanent qualifying mortgage loan sufficient to purchase the residence;

(iv) The home purchaser must have made a substantial earnest money deposit;

(v) The construction loan must not exceed 80 percent of the sales price of the residence;

(vi) The construction loan must be secured by a first lien on the lot, residence under construction, and other improvements;

(vii) The lending thrift must retain sufficient undisbursed loan funds throughout the construction period to ensure project completion;

(viii) The builder must incur a significant percentage of direct costs (*i.e.*, the actual costs of land, labor, and material) before any drawdown on the loan;

(ix) If at any time during the life of the construction loan any of the criteria of this rule are no longer satisfied, the association must immediately recategorize the loan at a 100 percent risk-weight and must accurately report the loan in the association's next quarterly Thrift Financial Report;

(x) The home purchaser must intend that the home will be owner-occupied;

(xi) The home purchaser(s) must be an individual(s), not a partnership, joint venture, trust corporation, or any other entity (including an entity acting as a sole proprietorship) that is purchasing the home(s) for speculative purposes; and

(xii) The loan must be performing and not more than 90 days past due.

(2) The documentation for each loan and home sale must be sufficient to demonstrate compliance with the criteria in paragraph (jj)(1) of this section. The OTS retains the discretion to determine that any loans not meeting sound lending principles must be placed in a higher risk-weight category. The OTS also reserves the discretion to modify these criteria on a case-by-case basis provided that any such modifications are not inconsistent with the safety and soundness objectives of this paragraph (jj).

3. Section 567.6 is amended by adding a new paragraph (a)(1)(iii)(D) to read as follows:

§ 567.6 Risk-based capital credit risk weight categories.

(a) *Risk-weighted Assets.* * * *

(1) *On-Balance Sheet Assets.* * * *

* * * * *

(iii) *50 percent Risk Weight (Category 3).* * * *

* * * * *

(D) Qualifying residential construction loans as defined in § 567.1(jj) of this part.

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Dated: March 30, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-7961 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket Nos. 86G-0104 and 86G-0105]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Ethyl Esters of Fatty Acids and Sulfated Butyl Oleate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethyl esters of fatty acids and sulfated butyl oleate in aqueous emulsions for dehydrating grapes to produce raisins. This action is in response to petitions filed by Victorian Chemical Co., Pty. Ltd.

DATES: Effective April 13, 1992; written objections and requests for a hearing by May 13, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9519.

SUPPLEMENTARY INFORMATION: In notices published in the Federal Register of April 9, 1986 (51 FR 12212 and 12213), FDA announced that GRAS petitions 6G0312 and 6G0311, respectively, had been filed by Victorian Chemical Co., Pty. Ltd., P.O. Box 71, Richmond, Victoria 3121, Australia, proposing to affirm that ethyl esters of fatty acids and sulfated butyl oleate are generally recognized as safe (GRAS) for use in aqueous emulsions for dehydrating grapes to produce raisins. No comments were received in response to these notices.

The petitioner requested GRAS affirmation of ethyl esters of fatty acids and sulfated butyl oleate based upon a history of common use in food in Australia before 1958 (21 CFR 170.30(c)(2)). Section 170.30(c)(2) requires, among other things, that common use in food be documented by published or other information and be corroborated by information from a second, independent source that confirms the history and circumstances of use. In addition, 21 CFR 170.3(f) defines "common use in food" to mean a substantial history of consumption of a substance for food use by a significant number of consumers.

FDA has evaluated the data in the petitions and has concluded that the data in the petitions establish that prior to 1958, ethyl esters of fatty acids and sulfated butyl oleate were used only on an experimental basis for the dehydration of grapes. This past use of these substances does not constitute a substantial history of consumption by a significant number of consumers. Consequently, these substances do not qualify for GRAS affirmation based upon a history of common use in food before 1958 as required by §§ 170.3(f) and 170.30(c)(2).

Moreover, FDA has concluded that because the methyl esters of edible fatty acids are already approved as food additives (21 CFR 172.225) for dehydrating grapes, the petitioned use of ethyl esters of fatty acids and sulfated butyl oleate in dehydrating grapes should be evaluated as food additives, in accordance with 21 CFR 170.38(a), and, if their use is safe, listed in 21 CFR part 172. This action will ensure that similar substances and uses will be listed in the same part of the Code of Federal Regulations. FDA informed the petitioner of its decision to evaluate the substances as food additives, and the petitioner did not object.

Accordingly, FDA has evaluated the data in the petitions and other relevant material in light of the standard for food additives in section 409(c) of the act (21 U.S.C. 348(c)). In conducting this evaluation, the agency reviewed the data in the petitions and concludes that the consumption of sulfated butyl oleate resulting from its use on raisins will not exceed 1.1 milligrams (mg) per person per day (Ref. 1), which, after being metabolized, yields 0.18 mg of butanol per person per day, or 0.06 parts per million (ppm) in the diet. The L_{50} for butanol is 790 mg per kilogram (kg) of body weight per day in rats (or 47,400 mg per day for a 60-kg person). This L_{50} value is several orders of magnitude larger than the estimated exposure to butanol (0.18 mg per day) due to the use of sulfated butyl oleate in dehydrating grapes to raisins. In addition, the metabolism of butanol is well characterized and is of no toxicological concern (Ref. 2) under the petitioned conditions of use.

In addition, there is information in the petition that establishes that the consumption of ethyl esters of fatty acids due to their use in dehydrating grapes to raisins will not exceed 2.2 mg per person per day (Ref. 3). Upon metabolism, these esters will yield 0.35 mg of ethanol per person per day. On an equal exposure basis, methyl esters of fatty acids (which are listed in 21 CFR 172.225) have more toxic potential than the ethyl esters because of the potential for release of methyl alcohol. As stated above, the petitioned use is expected to contribute 2.2 mg of the less toxic ethyl esters of fatty acids to the daily diet, an amount that is well below the level of methyl esters of fatty acids that is considered safe (91 mg per person per day). Thus, the small exposure to ethyl esters of fatty acids is of no toxicological concern (Ref. 2).

Based on its review of the foregoing, FDA concludes that the proposed use of ethyl esters of fatty acids and the proposed use of sulfated butyl oleate are safe and that the food additive regulations in 21 CFR part 172 should be amended by revising § 172.225, and by adding § 172.270 as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of these actions. FDA has concluded that the actions will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting these findings, contained in environmental assessments, may be seen in the Dockets Management branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 13, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memoranda dated March 31, 1986, and April 4, 1986, from P. M. Kuznesof to J. Gordon, "Sulfated Butyl Oleate for Use in the Dehydration of Grapes to Raisins," Victorian Chemical Company.

2. Memoranda dated March 13, 1986, and April 11, 1986, from C.B. Johnson to J. Gordon, "Sulfated Butyl Oleate and Ethyl Esters of Fatty Acids for Use in the Dehydration of Grapes to Raisins."

3. Memoranda dated March 31, 1986, from P.M. Kuznesof to J. Gordon, "Ethyl Esters of Fatty Acids for Dehydration of Grapes to Raisins," Victorian Chemical Company.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.225 is revised to read as follows:

§ 172.225 Methyl and ethyl esters of fatty acids produced from edible fats and oils.

Methyl esters and ethyl esters of fatty acids produced from edible fats and oils may be safely used in food, subject to the following prescribed conditions:

(a) The additive consists of a mixture of either methyl or ethyl esters of fatty acids produced from edible fats and oils and meets the following specifications:

(1) Not less than 90 percent methyl or ethyl esters of fatty acids.

(2) Not more than 1.5 percent unsaponifiable matter.

(b) The additive is used or intended for use at the level not to exceed 3 percent by weight in an aqueous emulsion in dehydrating grapes to produce raisins, whereby the residue of the additive on the raisins does not exceed 200 parts per million.

3. New § 172.270 is added to subpart C to read as follows:

§ 172.270 Sulfated butyl oleate.

Sulfate butyl oleate may be safely used in food, subject to the following prescribed conditions:

(a) The additive is prepared by sulfation, using concentrated sulfuric acid, of a mixture of butyl esters produced by transesterification of an edible vegetable oil using 1-butanol. Following sulfation, the reaction mixture is washed with water and neutralized with aqueous sodium or potassium hydroxide. Prior to sulfation, the butyl oleate reaction mixture meets the following specifications:

(1) Not less than 90 percent butyl oleate.

(2) Not more than 1.5 percent unsaponifiable matter.

(b) The additive is used or intended for use at a level not to exceed 2 percent by weight in an aqueous emulsion in dehydrating grapes to produce raisins, whereby the residue of the additive on the raisins does not exceed 100 parts per million.

Dated: April 1, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-8401 Files 4-10-92; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510 and 546

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Vetri-Tech, Inc., to Arkansas Micro Specialties, Inc.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

SUPPLEMENTARY INFORMATION: Vetri-Tech, Inc., P.O. Box 324, Montvale, NJ 07645, had informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA 140-578 (tetracycline hydrochloride soluble powder) to Arkansas Micro Specialties, Inc., P.O. Box 308, Highway 71 North, Lowell, AR 72745. Accordingly, FDA is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) by removing Vetri-Tech, Inc., because the firm is no longer the sponsor of any approved NADA's. Also, the regulations are amended in 21 CFR 546.180d to reflect the change of sponsor.

List of Subjects in 21 CFR

Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Part 546

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 546 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing "Vetri-Tech, Inc." and in the table in paragraph (c)(2) by removing "058752".

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR part 546 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 546.180d [Amended]

2. Section 546.180d *Tetracycline soluble powder* is amended in paragraph (c)(6)(iv)(*d*)(*3*) by removing "058752" and adding in its place "047863".

Dated: April 6, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-8403 Filed 4-10-92; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Tilmicosin Phosphate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Animal Health, A Division of Eli Lilly and Co. The NADA provides for the subcutaneous use of tilmicosin phosphate injection for the treatment of bovine respiratory disease in cattle. The regulations are also amended to provide for a tolerance for tilmicosin residues in edible cattle tissues.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8659.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, a Division of Eli Lilly

and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 140–929 which provides for the subcutaneous use of Micotil® 300 (tilmicosin phosphate) injection for the treatment of cattle with bovine respiratory disease associated with *Pasteurella haemolytica* sensitive to tilmicosin. The drug is limited to use by or on the order of a licensed veterinarian. The NADA was approved March 24, 1992, and the regulations are amended by adding new § 522.2471 (21 CFR 522.2471) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, the agency is adding new § 556.735 (21 CFR 556.735) to establish a tolerance for residues of tilmicosin in edible cattle tissues. As discussed in the freedom of information summary, parent tilmicosin was selected as the marker residue, and liver as the target tissue, for determination of tilmicosin residues in edible cattle tissues.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning March 24, 1992, because no active ingredient (including any ester or salt thereof) has been previously approved in any other application.

A high performance liquid chromatographic method is available to determine the presence and amount of the marker residue in cattle liver. In addition, a high performance liquid chromatographic/mass spectrometric method is available to confirm the presence of the marker residue in liver. Both methods have been validated by FDA and the U.S. Department of Agriculture and are for regulatory purposes. The methods are available for public inspection at the Dockets Management Branch (address above) and are attached to the freedom of information summary for this NADA. Requests for copies of these methods should be made under the Freedom of Information Act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.2471 is added to read as follows:

§ 522.2471 Tilmicosin phosphate injection.

(a) *Specifications.* Each milliliter contains 300 milligrams of tilmicosin base as tilmicosin phosphate.

(b) *Sponsor.* See 000986 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.735 of this chapter.

(d) *Conditions of use*—(1) *Cattle*—(i) *Amount.* 10 milligrams per kilogram body weight.

(ii) *Indications for use.* For the treatment of bovine respiratory disease associated with *Pasteurella haemolytica.*

(iii) *Limitations.* For use only in cattle as a single subcutaneous injection. Not for human use. Use of this antibiotic in humans may prove fatal. Do not use in automatically powered syringes. Do not inject more than 15 milliliters per injection site. If no improvement is noted within 48 hours, the diagnosis should be reevaluated. Do not use intravenously in cattle. Intervenous injection in cattle will be fatal. Do not use in other animal species. Injection of this antibiotic has been found to be fatal in swine and nonhuman primates, and it may be fatal in horses. Safety of use in pregnant and breeding animals has not been established. Do not use in female dairy cattle 20 months of age or older. Use of this antibiotic in this class of cattle may cause milk residues. Do not use in veal calves, calves under 1 month of age, or calves being fed an all-milk diet. Use in these classes of calves may cause violative tissue residues to remain beyond withdrawal time. Do not slaughter within 28 days of last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. New § 556.735 is added to subpart B to read as follows:

§ 556.735 Tilmicosin.

A tolerance of 1.2 parts per million is established for parent tilmicosin (marker residue) in liver (target tissue) of cattle.

Dated: April 6, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92–8411 Filed 4–10–92; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Amprolium

CFR Correction

In title 21 of the Code of Federal Regulations, parts 500 to 599, revised as of April 1, 1991, in § 558.55, in paragraph (d)(2), in the table, on page 503, the following tabular material was inadvertently omitted from the end of the table and should read as follows:

§ 558.55 [Corrected]

* * * * *

(d) * * *

(2) * * *

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
	Arsanilate sodium 90 (0.01%)	Broiler chickens; prevention of coccidiosis caused by *E. tenella* only; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic.	
	Arsanilic acid 90 (0.01%)	......do	......do	
	Bacitracin 100 to 200	Broiler chickens; prevention of coccidiosis caused by *E. tenella* only; treatment of chronic respiratory disease (air-sac infection) and blue comb (nonspecific infectious enteritis).	As bacitracin methylene disalicylate, or zinc bacitracin.	
	Chlortetracycline 100 to 200	Broiler chickens; prevention of coccidiosis caused by *E. tenella* only; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis); prevention of synovitis.	Not for laying chickens; as chlortetracycline hydrochloride.	
	Hygromycin B 8 to 12	Broiler chickens; prevention of coccidiosis caused by *Eimeria tenella* only; control of infestation of large round worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*).	Feed according to subtable in item (i)	
	Penicillin 2.4 to 50	Broiler chickens; prevention of coccidiosis caused by *E. tenella* only; growth promotion and feed efficiency.	As procaine penicillin	
	Penicillin plus streptomycin 90 to 180 (of combination).	Treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).	Feed contains 16.7% penicillin; as procaine penicillin; as streptomycin sulfate.	
	Roxarsone 22.7 to 45.4 (0.0025% to 0.005%).	Broiler chickens; prevention of coccidiosis caused by *E. tenella* only; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic.	
(iii) 113.5 (0.0125%).		1. Laying chickens; prevention of coccidiosis		
		2. Laying chickens; treatment of coccidiosis	For moderate outbreaks of coccidiosis; administer for 2 weeks.	
	Bambermycins 1 to 3 plus roxarsone 22.8 to 34.1 (0.0025% to 0.00375%).	Broiler chickens; as an aid in the prevention of coccidiosis; for increased rate of weight gain, improved feed efficiency, and improved pigmentation.	Feed continuously as the sole ration; as sole source of amprolium and organic arsenic; roxarsone as provided by No. 053501 in § 510.600(c) of this chapter, bambermycins by No. 012799; withdraw 5 d before slaughter.	
	Bambermycins 1 to 4	Growing turkeys; prevention of coccidiosis; increased rate of weight gain and improved feed efficiency.	Feed continuously as the sole source of amprolium; bambermycins as provided by No. 012799 in § 510.600(c) of this chapter.	012799
(iv) 113.5 to 227 (0.0125% to 0.025%).		1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis.		
		2. Turkeys; prevention of coccidiosis		
(iv) 113.5 to 227 (0.0125% to 0.025%).	Arsanilate sodium 90 (0.01%)	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic.	
		2. Turkeys; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	......do	
	Arsanilic acid 90 (0.01%)	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	......do	
		2. Turkeys; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	......do	
	Arsanilic acid 90 (0.01%) plus erythromycin 92.5.	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation; as an aid in the prevention of chronic respiratory disease during periods of stress.	Feed for 2 d before stress and 3 to 6 d after stress; withdraw 5 d before slaughter; as sole source of organic arsenic.	
		2. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation; as an aid in the prevention of infectious coryza.	Feed for 7 to 14 d; withdraw 5 d before slaughter; as sole source of organic arsenic.	

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
	Arsanilic acid 90 (0.01%) plus erythromycin 185.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease.	Feed for 5 to 8 d; do not use in birds producing eggs for food purposes; withdraw 5 d before slaughter; as sole source of organic arsenic.	
	Arsanilic acid 90 (0.01%) plus erythromycin 4.6 to 18.5.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improved pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic.	
	Bacitracin 4 to 50	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency.	As bacitracin methylene disalicylate or bacitracin zinc.	[1] 012769
		2. Turkeys; prevention of coccidiosis; growth promotion and feed efficiency.	......do	
(iv) 113.5 to 227 (0.0125% to 0.025%).	Bacitracin 100 to 200	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).	......do	
		2. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).	As bacitracin zinc	
	Bacitracin 100 to 500	Turkeys; prevention of coccidiosis; treatment of infectious sinusitis, blue comb (mud fever).	As bacitracin zinc	
	Bacitracin plus penicillin 100 to 500 (of combination).	......do	Feed contains 50% to 75% of bacitracin but not more than 125 g penicillin; as procaine penicillin; as bacitracin zinc.	
	Carbarsone 227 to 340.5	Turkeys; aid in prevention of coccidiosis (*Eimeria adenoeides*, *E. meleagrimitis*, and *E. gallopavonis*) and blackhead.	Feed continuously 2 weeks before coccidiosis and blackhead are expected and continue as long as prevention is needed; withdraw 5 days before slaughter; use as sole source of amprolium and organic arsenic; do not use as a treatment for outbreaks of coccidiosis; carbarsone by 011794 in § 510.600(c) of this chapter.	000006
	Chlortetracycline 100 to 200	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis); prevention of synovitis.	Not for laying chickens, as chlortetracycline hydrochloride.	
	Erythromycin 4.6 to 18.5	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency.	As erythromycin thiocyanate	
	Erythromycin 92.5	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention of chronic respiratory disease during periods of stress.	Feed for 2 d before stress and 3 to 6 d after stress; withdraw 24 h before slaughter.	
		2. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention of infectious coryza.	Feed for 7 to 14 d; withdraw 24 h before slaughter.	
(iv) 113.5 to 227 (0.0125% to 0.025%).	Erythromycin 185	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease.	Feed for 5 to 8 d, do not use in birds producing eggs for food purposes; withdraw 48 h before slaughter.	
	Hygromycin B 8 to 12	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; control of infestation of large round worms (*Heterakis gallinae*) and capillary worms (*Capillaria obsignata*).	Feed according to subtable in item (i)	
	Penicillin 2.4 to 50	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency.	As procaine penicillin	
		2. Turkeys; prevention of coccidiosis; growth promotion and feed efficiency.	......do	

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
	Penicillin plus streptomycin 90 to 180 (of combination).	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).	Feed contains 16.7% penicillin; as procaine penicillin; as streptomycin sulfate.	
		2. Turkeys; prevention of coccidiosis; treatment of infectious sinusitis, blue comb (mud fever), hexamitiasis.	Feed contains not less than 2.4 g of penicillin nor less than 12 g of streptomycin; as procaine penicillin; as streptomycin sulfate.	
	Roxarsone 22.7 to 45.4 (0.0025% to 0.005%).	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic.	
		2. Turkeys; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	......do	
(v) 227 (0.025%)		Laying chickens; treatment of coccidiosis	For severe outbreaks of coccidiosis; administer for 2 weeks.	

[1] Bacitracin zinc in § 510.600(c) of this chapter.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, 234

[Docket No. N-92-3427; FR-3261-N-01]

Loan and Mortgage Insurance; Changes to the Maximum Loan and Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commission, HUD.

ACTION: Notice of revisions to FHA maximum loan and mortgage limits for high-cost areas.

SUMMARY: This Notice amends the list of areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act (NHA) by increasing the mortgage limits for Tompkins County, New York; Guaynabo Municipio, Puerto Rico; the Columbus, Ohio MSA; Tippecanoe County, Indiana; and Elko County, Nevada; and by adding to the list of high cost areas: Lincoln County, Maine; Berkeley County, West Virginia; Transylvania County, North Carolina; McKinley County, New Mexico; Box Elder County, Utah; and Mohave County, Arizona.

Loan and mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, room 9272; telephone (202) 708–2700. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, room 9158; telephone (202) 708–2880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act, 12 U.S.C. 1703 and 1709 *et. seq.*, authorizes HUD to insure loans and mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and manufactured homes and lots in combination. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum loan and mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, section 214 of the NHA provides for special high-cost limits for insured mortgages in Alaska, Guam, Hawaii, and the Virgin Islands.

The last comprehensive list of high-cost areas was published on August 1, 1991 (56 FR 36980), listing all areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the appplicable limits for each area. An amendment to the annual listing was published on December 27, 1991 (56 FR 66975).

This Document

Today's document increases high-cost loan and mortgage limits for Tompkins County, New York; Guaynabo Municipio, Puerto Rico; the Columbus, Ohio MSA; Tippecanoe County, Indiana; and Elko County, Nevada; and adds high-cost loan and mortgage limits for Lincoln County, Maine; Berkeley County, West Virginia; Transylvania County, North Carolina; McKinley County, New Mexico; Box Elder County, Utah; and Mohave County, Arizona.

These amendments appear in two parts. Part I explains how the high-cost limits are calcualted for manufactured home and lot loans insured under Title I of the National Housing Act. Part II lists each high-cost area, with applicable limits for single family residences (including condominiums) insured under sections 203(b), 234(c) and 214 of the National Housing Act.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home Improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department publishes the revised dollar limitations as follows:

National Housing Act High Cost Loan and Mortgage Limits

Part I: Method of Computing Limits Under Titel I, National Housing Act

A. Section 2(b)(1)(D) Combination Manufactured Home and Lot (Excluding Alaska, Guam, Hawaii, and the Virgin Islands)

To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Lincoln County, ME has a one-family limit of $95,000. The combination home and lot loan limit is $95,000 × .80, or $76,000.

B. Section 2(b)(1)(E): Lot Only (Excluding Alaska, Guam, Hawaii and the Virgin Islands)

To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Lincoln County, ME has a one-family limit of $95,000. The lot-only loan limit is $95,000 × .20, or $19,000.

C. Section 2(b)(2). Alaska, Guam, and Hawaii Limits

The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

1. For manufactured homes: $56,700 ($40,500 × 140%).

2. For combination manufactured homes and lots: $75,600 ($54,000 × 140%).

3. For lots only: $18,900 ($13,500 × 140%).

D. Limits in the Virgin Island

For the Virgin Islands, the maximum mortgage amount for a one-family residence has been increased under section 203(b) to 185% of the basic mortgage limit. Accordingly, the combination home and lot limit is $99,900 ($54,000 x 185%). The lot limit is $24,975 ($13,500 x 185%).

Part II: Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Region I.—HUD Field Office—Bangor				
Lincoln County, ME	$95,000	$107,000	$130,000	$150,000
Region II.—HUD Field Office—Albany				
Tompkins County, NY	95,000	107,000	130,000	150,000
Region III.—HUD Field Office—Charleston				
Berkeley County, WV	80,250	90,400	109,850	126,750
Region IV.—HUD Field Office—Caribbean				
Guaynabo Municipo, PR	121,600	136,950	166,400	192,000
HUD Field Office—Greensboro				
Transylvania County, NC	80,750	90,950	110,500	127,500
Region V.—HUD Field Office—Indianapolis				
Tippecanoe County, IN	87,400	98,400	119,600	138,000
Region VI.—HUD Field Office—Columbus				
Columbus, Ohio MSA—Delaware County, Fairfield County, Franklin County, Licking County, Madison County, Pickaway County, Union County	98,700	111,150	135,100	155,850
Region VII.—HUD Field Office—Albuquerque				
McKinley County, NM	79,300	89,300	108,550	125,250
Region VIII.—HUD Field Office—Salt Lake City				
Box Elder County, UT	82,650	93,050	113,100	130,500
Region IX.—HUD Field Office—Reno				
Elko County, NV	88,250	99,400	120,750	139,300
HUD Field Office—Phoenix				
Mohave County, AZ	74,100	83,450	101,400	117,000

Dated: April 7, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92-8529 Filed 4-10-92; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Bloodborne Pathogens; Approval of Information Collection Requirements

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Final rule; approval of information collection requirements.

SUMMARY: On December 6, 1991, OSHA published a final standard governing occupational exposure to bloodborne pathogens (56 FR 64004). The standard is designed to eliminate or minimize occupational exposure to Hepatitis B Virus (HBV), Human Immunodeficiency Virus (HIV) and other bloodborne pathogens. At that time OSHA submitted the information collection requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (PRA) of 1980. Public reporting burden for this collection of information was estimated to average five minutes per employer response to an OSHA compliance officer's request for access to the employer's records.

OMB reviewed the collection of information requirements for occupational exposure to bloodborne pathogens in accordance with the PRA, 44 U.S.C. 3501 *et seq.*, and 5 CFR part 1320. OMB approved all information requirements contained in 29 CFR 1910.1030 under OMB clearance number 1218-0180. The OMB clearance expires on February 28, 1995. This document will also amend the December 6, 1991 rule to properly display the OMB control number.

EFFECTIVE DATE: OMB's approval of information requirements becomes effective March 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., room N3637, Washington, DC 20210; Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: The PRA provisions on information collection are triggered when an OSHA compliance officer asks an employer to produce certain records and, in some circumstances, when an employer goes out of business. The Occupational Exposure to Bloodborne Pathogens standard requires that OSHA have access to the employer's Exposure Control Plan (1910.1030(c)(1)(v)), as well as the employer's training and medical records (1910.1030(h)(3) (ii) and (iii)). If an employer goes out of business and there is no successor employer to receive these records, the employer is required to notify the Director of the National Institute of Occupational Safety and Health three months prior to destroying the records and transmit the records to the Director if he or she requests them (1910.1030(h)(4)).

On February 7, 1992, OMB approved the information collection provisions for three years, the maximum period authorized by the Paperwork Reduction Act.

Authority and Signature

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is being taken pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Section 4 of the Administration Procedure Act, 5 U.S.C. 553(d)(3), Secretary of Labor's Order No. 1-90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC this 7th day of April, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary for Occupational Safety and Health.

Part 1910 of title 29 of the Code of Federal Regulations is amended as follows:

PART 1910—[AMENDED]

§ 1910.1030 [Amended]

In § 1910.1030, by adding a parenthetical, as follows, at the end of the regulatory text:

(Approved by the Office of Management and Budget under control number 1218-0180)

[FR Doc. 92-8363 Filed 4-10-92; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Kansas Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Kansas Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment proposes editorial changes and other minor revisions to improve the operational efficiency of the Kansas program. The amendment is approved.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Plan

The Secretary of the Interior conditionally approved the Kansas AMLR program on February 1, 1982. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and disposition of comments can be found in the February 1, 1982, **Federal Register** (47 FR 4513). Deficiencies that resulted in the conditional approval were corrected by the State, and on June 3, 1983, all conditions of approval were removed by the Secretary **Federal Register** (48 FR 24874). Subsequent actions concerning the Kansas Plan and amendments to the Plan can be found at 30 CFR 916.25.

II. Discussion of Proposed Amendment

By letter dated October 25, 1991, and revisions received October 31, 1991, Kansas submitted a reclamation plan amendment to OSM (Administrative Record No. AML-KS-156). The proposed amendment consists of the addition of new language, revised narrative, and editorial changes to the Kansas Administrative Regulations (K.A.R.) at K.A.R. chapter 47, article 16. Substantive changes were made to the following areas of the Plan:

(1) At K.A.R. 47-16-5(b), Entry and consent to reclaim, the proposed

amendment adds new language to provide procedures for entry to land where an emergency exists.

(2) At K.A.R. 47-16-6, Liens, the proposed amendment revises the language to specify the circumstances under which the Secretary of the Kansas Department of Health and Environment may waive a lien, and provides for owner notification prior to a lien being filed, and other minor revisions. Kansas submitted the proposed amendment on its own initiative.

III. Public and Agency Comments

OSM solicited public comment and provided opportunity for a public hearing on the proposed amendment in the November 15, 1991, **Federal Register** (56 FR 58018). No public comments were received as of December 16, 1991, the close of the public comment period. Since no one requested an opportunity to testify at a public hearing, none was held.

Pursuant to 30 CFR 884.14(a)(2), comments were also solicited from various Federal agencies with an actual or potential interest in the Kansas plan. No agency comments were received.

IV. Director's Decision

The Director finds that the Kansas proposed amendment is in accordance with section 405 of SMCRA and the Secretary's regulations at 30 CFR part 884, and is approving it. The Federal regulations at 30 CFR part 916, codifying decisions concerning the Kansas AMLR plan are amended to implement this decision.

V. Procedural Matters

1. National Environmental Policy Act

Approval of State/Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, appendix 8, paragraph 8.4B(29).

2. Executive Order 12291 and the Regulatory Flexibility Act

On November 23, 1987, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State/Tribal AMLR plans and amendments. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis and a regulatory review by OMB.

This rulemaking was examined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Department of the Interior determined that this rule will not have a significant economic effect on a substantial number of small entities. This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of Executive Order 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining, Abandoned Mine Land Reclamation.

Dated: January 28, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

30 CFR part 916 is amended as follows:

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.25 is amended by adding paragraph (c) to read as follows:

§ 916.25 Approval of abandoned mine land reclamation plan amendments.

* * * * *

(c) The Kansas AMLR Plan amendment submitted on October 25, 1991, is approved effective April 13, 1992.

[FR Doc. 92-8466 Filed 4-10-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Kansas as a modification to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the repair of rills and gullies as a normal husbandry practice.

The amendment is intended to revise the State program to be consistent with corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Submission of Amendment

By letter dated June 29, 1989 (Administrative Record No. KS-436), Kansas submitted a proposed amendment to its program pursuant to SMCRA. The amendment pertained to general requirements, definitions, permit applications, public hearings, assessment conferences, individual civil penalties and civil penalties, permit review, bonding procedures, performance standards, underground mining, small operator assistance, lands unsuitable for surface mining, blaster certification, employee financial interests, inspection and enforcement, subsidence control, and incidental coal extraction.

By letter dated July 10, 1989 (Administrative Record No. KS-440), Kansas submitted a proposed guideline titled "Guidelines for the Repair of Rills

and Gullies in Kansas," as a revision to the June 29, 1989, amendment package. Kansas submitted the proposed guideline for approval as a normal husbandry practice pursuant to SMCRA. The guideline that Kansas proposes will augment K.A.R. 47–9–1(c)(42), revegetation: Standards of success.

During its review, OSM identified concerns it had with the guideline and notified Kansas of these concerns by letter dated September 8, 1989 (Administrative Record No. KS–445). Kansas responded by submitting a revised guideline on October 30, 1989 (Administrative Record No. KS–449).

OSM published a notice in the December 1, 1989, **Federal Register** (54 FR 49773) that included announcement of receipt of the revised guideline and invited public comment on its adequacy (Administrative Record No. KS–470). The public comment period ended December 18, 1989. On June 29, 1990 and October 9, 1990 (Administrative Record No. KS–471 and KS–488, respectively), Kansas submitted additional revisions to the original amendment package, however, these revisions concerned topics unrelated to the proposed guideline discussed in this notice. OSM published a final **Federal Register** notice [September 13, 1991 (56 FR 46531)] announcing the approval of Kansas's amendment package that excluded a finding on the proposed guideline titled "Guidelines for the Repair of Rills and Gullies in Kansas." This notice now addresses the outstanding issue regarding the practices for repair of rills and gullies as normal husbandry practices.

III. Director's Findings

Kansas proposes to adopt the procedures in its "Guidelines for the Repair of Rills and Gullies in Kansas" as a normal husbandry practice. Specifically, Kansas proposes to adopt the USDA Soil Conservation Services's (SCS) guidelines for the treatment of rills and gullies, which were prepared as part of the SCS critical area planting (CAP) process. The SCS defines CAP as the planting of vegetation, including trees, shrubs and grasses, on highly erodible or critically eroding areas. Mined lands are included under CAP.

The proposed guidelines define normal husbandry practices that would allow for the repair of rills and gullies that form during the initial establishment of a permanent vegetative cover. Treatment of rills and gullies after initial vegetation establishment would be considered an augmentative practice. In addition, the State defines the treatment of rills and gullies requiring a permanent reseeding of more than 10 acres in a contiguous block or 10 percent of a permit area initially seeded during a single year, as an augmentative practice because of the potential for delayed seeding of large areas that, in turn, would reduce the probability of revegetation success. Both augmentative practices would restart the bond period.

The proposed guideline would require rills and gullies to be filled with topsoil if the area is not large or, for a large area, contoured and smoothed. The area must be seeded during the appropriate season with the approved perennial species and mulched. Three types of mulch are allowed: Native hay or straw, wood chips, or strawy manure. The native hay or straw must either be crimped or tackified with an asphalt emulsion. Straw from small grain species cannot be used. The wood chips can be applied alone or tackified.

The use of hay bales or rock rip-rap to fill or repair rills and gullies is allowable, but must be approved by the State on a case-by-case basis. If used, it must be monitored to assure that the treatment provides long term erosion control, does not disrupt the postmining land use, and that permanent vegetation becomes established. If this treatment is not effective then filling of the rills and gullies with topsoil and revegetation will be required.

The Federal regulations at 30 CFR 816.116(c)(4) provides that the regulatory authority may approve selective husbandry practices as normal husbandry practices (excluding augmented seeding, fertilization, or irrigation), provided it obtains prior approval from the Director of OSM in accordance with 30 CFR 732.17. These normal husbandry practices can be implemented without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

OSM believes that by limiting the repair of rills and gullies to the period prior to initial establishment of vegetation, by further limiting the size of areas that may be repaired without restarting the liability period, and by demonstrating that such practice is supported as an acceptable land management activity for similar situations in the State, Kansas has ensured that the probability of revegetation success, in accordane with Federal program requirements, will not be reduced. Therefore, the Director has determined that Kansas's proposed guideline for the repair of rills and gullies is consistent with and no less effective than the Federal regulation requirements and is approving it.

IV. Public and Agency Comments

1. Public Comments

OSM solicited public comment on the proposed amendment and provided opportunity for public hearing. Because no one requested an opportunity to testify at a public hearing, no hearing was held. No public comments were received.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Kansas program. Comments were also solicited from various State agencies. The following comments were received.

Soil Conservation Service (SCS)

By letter dated December 21, 1989, (Administrative Record No. KS–459) the SCS commented that Kansas's Guideline for the Repair of Rills and Gullies in Kansas contained a typographical error. The second paragraph of the guideline contains the word "planning" instead of the correct word "planting" in the phrase "critical area planting". While OSM recognizes the error, the error will not affect the application of the guideline. Kansas is being notified of this error by way of this Federal Register notice.

Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), concurrence was solicited from the EPA for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

By letter dated March 26, 1990, (Administrative Record No. KS–466) EPA stated that it had no comments and concurred with the revised amendment

package that included the proposed guidelines for rill and gully repair and was published in the December 1, 1989, **Federal Register** (54 FR 49773).

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

30 CFR 732.17(h)(4) requires that all amendments that may have an effect on historic properties be provided to the SHPO and ACHP for comment. Comments were solicited from these offices. By letter dated November 27, 1989, the SHPO responded that he had no objection to the proposed amendment (Administrative Record No. KS-451). No comments were received from ACHP.

V. Director's Decision

Based on the above finding, the Director is approving the proposed amendment submitted by Kansas on July 10, 1989, and revised on October 30, 1989. The Director is approving the Kansas guidelines with the provision that they be fully implemented in identical form as submitted to and reviewed by OSM and the public, recognizing that the typographical error discussed under IV.2., Agency [illegible]ts Comments should be corrected by Kansas.

The Federal regulations at 30 CFR part 916 codifying decisions concerning the Kansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance with the National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review of OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of Executive Order 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 24, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.15 is amended by adding paragraph (l) as follows:

§ 916.15 Approval of regulatory program amendments.

* * * * *

(l) The procedures in "Guidelines for the repair of rills and gullies in Kansas" submitted by Kansas for approval as a normal husbandry practice on October 30, 1989, is approved April 13, 1992.

[FR Doc. 92-8465 Filed 4-10-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is approving a proposed amendment to the New Mexico permanent regulatory program (hereinafter referred to as the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to the rules governing the hydrologic balance as it relates to water quality standards and effluent limitations for surface and underground mining activities. The proposed amendment revises the New Mexico program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, telephone: (505) 776-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. Information pertaining to the general background for the New Mexico program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Actions taken subsequent to the approval of the New Mexico program are codified at 30 CFR 931.15, 931.16, and 931.30.

II. Submission of Amendment

By letter dated July 9, 1991 (Administrative Record No. NM-642), New Mexico submitted a proposed amendment to its permanent regulatory program pursuant to SMCRA. New Mexico submitted the proposed amendment to satisfy a required program amendment at 30 CFR 931.16(b). The provision of the Coal Surface Mining Commission (CSMC) rules that New Mexico proposed to amend is at CSMC Rule 80-1-20-

42(a)(8), which concerns hydrologic balance as it relates to water quality standards and effluent limitations for surface and underground mining activities.

OSM announced its receipt of the proposed amendment in the August 2, 1991, **Federal Register** (56 FR 37051) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment (Administrative Record No. NM–647). The public comment period closed September 3, 1991. The public hearing, scheduled for August 27, 1991, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns relating to the proposed rule change at CSMC Rule 80–1–20–42(a)(8) and an inconsistent reference for effluent limitations at CSMC Rule 80–1–20–42(a)(4)(ii). OSM notified New Mexico of the concerns by letter dated September 20, 1991 (Administrative Record No. NM–655). New Mexico responded to the letter by submitting on October 3, 1991, a revised amendment (Administrative Record No. NM–659). OSM announced its receipt of the revised amendment in the October 25, 1991, **Federal Register** (56 FR 55249; Administrative Record No. NM–663) and in the same notice, reopened the public comment period on the proposed amendment. The reopened public comment period closed on November 12, 1991.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds as discussed below that the proposed amendment submitted by New Mexico on July 9, 1991, and subsequently revised on October 3, 1991, is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR chapter VII.

1. CSMC Rule 80–1–20–42(a)(8), Water Quality Standards and Effluent Limitations

The Director previously required at 30 CFR 931.16(b) that New Mexico amend its program to require discharges from areas disturbed by underground mining activities to comply with applicable State and Federal water quality laws and regulations and with the effluent limitations set forth at 40 CFR Part 434 (finding No. 1; 56 FR 28484, 28486; June 21, 1991). In response to the required amendment, New Mexico proposed at CSMC Rule 80–1–20–42(a)(8) that discharges of water from areas disturbed by surface mining activities and underground mining activities comply with all applicable State and Federal water quality laws and regulations and with the Environmental Protection Agency's (EPA's) effluent limitations for coal mining at 40 CFR part 434.

New Mexico's proposed rule is substantively identical to the corresponding Federal regulations at 30 CFR 816.42 for surface mining activities and 30 CFR 817.42 for underground mining activities. Therefore, the Director finds that New Mexico's proposed rule at CSMC Rule 80–1–20–42(a)(8) is no less effective than the corresponding Federal regulations at 30 CFR 816.42 and 30 CFR 817.42. The Director is approving the proposed rule and is removing the required amendment at 30 CFR 931.16(b).

2. CSMC Rule 80–1–20–42(a)(4)(ii), Exemptions From the Water Quality Standards and Effluent Limitations for Certain Sedimentation Ponds and Treatment Facilities

CSMC Rule 80–1–20–42(a)(4)(ii) concerns exemptions from the requirements of the water quality standards and effluent limitations for certain sedimentation ponds and treatment facilities. In this rule, New Mexico proposed a nonsubstantive revision to delete the phrase "in the table below," because the effluent limitations table no longer exists in CSMC Rule 80–1–20–42(a)(8), and replace it with the phrase "in paragraph (a)(8) of this section." As discussed in finding No. 1, revised CSMC Rule 80–1–20–42(a)(8) ("paragraph (a)(8)") incorporates by reference the applicable EPA effluent limitations. Since proposed CSMC Rule 80–1–20–42(a)(4)(ii) is substantively identical to the corresponding Federal regulations at 30 CFR 816.46(e)(2) and 817.46(e)(2) for surface and underground mining activities, respectively, the Director finds that it is no less effective than the Federal regulations and is approving it.

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and the heads of various other Federal agencies with an actual or potential interest in the New Mexico program.

The U.S. Soil Conservation Service (SCS) responded by letters dated August 12 and October 29, 1991 (Administrative Record Nos. NM–649 and NM–667). One of SCS's comments was nonsubstantive and editorial in nature and pertained to a subsection which was not part of the proposed amendment. The comment was brought to New Mexico's attention, and New Mexico, in its October 3, 1991, amendment submission, revised its rule. SCS also commented on the phrase "in the table below" in CSMC Rule 80–1–20–42(a)(4)(ii). In its October 3, 1991, amendment submission, New Mexico revised its rule in response to SCS's comment (see finding No. 2).

The Mine Safety and Health Administration (MSHA), by letter dated August 15, 1991, (Administrative Record No. NM–650) commented that the proposed amendment is acceptable and does not appear to conflict with any current MSHA regulations.

The U.S. Bureau of Mines, by memoranda dated August 16 and October 28, 1991, indicated it had no comments (Administrative Record Nos. NM–652 and NM–666), but did suggest some nonsubstantive editorial revisions to New Mexico's rules. OSM has brought these suggestions to the attention of New Mexico through the inclusion of the memoranda in the administrative record.

The New Mexico State Office of the Bureau of Land Management, by memoranda dated August 21 and November 1, 1991 (Administrative Record Nos. NM–653 and NM–664), responded that it had no questions on or recommended changes to the proposed amendment.

The Department of the Army, U.S. Army Corps of Engineers, by letter dated July 31, 1991, acknowledged receipt of OSM's request for comments and stated that it found the amendment to be satisfactory (Administrative Record No. NM–658).

The Department of Energy, by telephone conversation on October 25, 1991, indicated that it had no comments on the revision to the proposed amendment (Administrative Record No. NM–662).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director solicited the written concurrence of the Administrator of the

EPA with respect to those provisions of the proposed program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). By letters dated January 6 and 24, 1992, EPA gave such written concurrence (Administrative Record Nos. NM-677 and NM-680). In addition, EPA raised other concerns it had with the existing language contained in CSMC Rules 80-1-20-42(a)(2)(ii), (a)(4)(i), and (b), which were not proposed for revision in this amendment. EPA indicated that these rules are inconsistent with the requirements of the Clean Water Act.

Existing CSMC Rule 80-1-20-42(a)(2)(ii) requires that applicable State and Federal water quality standards for receiving streams be met "except during precipitation events which are equal to or greater than the 2-year recurrence interval." EPA stated that this New Mexico rule is not consistent with the Federal regulations at 40 CFR part 434, which require that limitations for total suspended solids and pH be met for precipitation events less than or equal to a 10-year, 24-hour storm event.

EPA further noted that existing CSMC Rule 80-1-20-42(b) appears to exclude from regulation a discharge from the disturbed area if "(1) the discharge is demonstrated to have resulted from a precipitation event equal to or larger than a 10-year, 24-hour precipitation event; and (2) the discharge is from facilities designed, constructed, and maintained in accordance with the requirements of the part." EPA commented that this New Mexico rule is not consistent with the Federal regulations at 40 CFR part 434, which require that pH limitations be met for all precipitation events, including those greater than a 10-year, 24-hour storm event.

The concerns identified by EPA at existing CSMC Rules 80-1-20-42(a)(2)(ii) and (b) were also identified by OSM in its review process. OSM notified New Mexico of these concerns and additional OSM comments on the proposed amendment by letter dated September 20, 1991 (Administrative Record No. NM-655). In addition, OSM brought EPA's concerns to the attention of New Mexico by inclusion of EPA's letter in the administrative record (Administrative Record No. NM-677) and by means of this preamble. However, OSM has determined that these concerns are outside the scope of this rulemaking, because they relate to existing New Mexico rules that were not proposed by New Mexico for revision in this amendment. New Mexico will, as appropriate, address these concerns in future amendments (Administrative Record No. NM-659).

EPA expressed an additional concern that existing CSMC Rule 80-1-20-42(a)(4)(i) appears to create an exemption from water quality standards and effluent limitations when "the disturbed drainage area within the total disturbed area is small." EPA states that this is inconsistent with effluent limitation guidelines and the Clean Water Act, which require that State water quality standards be met, regardless of the size of the active mine. A review of New Mexico's rule in its entirety discloses that CSMC 80-1-20-42(a) provides that "(t)he Director may grant exemptions from these requirements only when: (i) (t)he disturbed drainage area within the total disturbed areas is small; *and* (ii) (t)he person who conducts the surface coal mining operations demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations in paragraph (a)(8) of this section and the applicable State and Federal water quality standards for downstream and receiving waters" (emphasis added). Contrary to EPA's concern, the exemption granted in New Mexico's rule pertains to siltation structures and not to the requirement that the effluent limitations and applicable State and Federal water quality standards be met.

OSM does not agree with EPA's comment because CSMC Rule 80-1-20-42(a)(4)(ii) provides an added measure of control over the exemption by requiring that the drainage from the small area meets applicable effluent limitations and water quality standards for receiving streams. The language in New Mexico's existing rule is substantively identical to the language contained in the Federal regulations at 30 CFR 816.46(e) (1) and (2) for surface mining activities and 30 CFR 817.46(e) (1) and (2) for underground mining activities. At the time that OSM promulgated these Federal regulations, OSM requested and received EPA's concurrence (44 FR 14901, 14908-14909; March 13, 1979). In addition, OSM has determined that this concern is outside the scope of this rulemaking, because it relates to an existing New Mexico rule that was not proposed by New Mexico for revision in this amendment.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director solicited comments on the proposed amendment from the SHPO and ACHP. Neither the SHPO nor ACHP provided any comments to OSM.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment as submitted by New Mexico on July 9, 1991, and as revised by it on October 3, 1991. In conjunction with this approval, the Director is removing the required amendment at 30 CFR 931.16(b). The Director's approval of the proposed amendment is contingent upon New Mexico's promulgation of the proposed revisions in the identical form as submitted to and approved by OSM.

The Federal regulations at 30 CFR 931, codifying decisions concerning the New Mexico program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their program into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order No. 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the

applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

3. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 3, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 931—New Mexico

1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended by adding a new paragraph (p) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(p) The following amendment, as submitted by New Mexico on July 9, 1991, and as revised it on October 3, 1991, is approved effective April 13, 1992: Revisions to the New Mexico Coal Surface Mining Commission (CSMC) rules pertaining to water quality standards and effluent limitations for surface and underground mining activities at CSMC Rules 80–1–20–42(a)(4)(ii) and (a)(8).

§ 931.16 [Amended]

3. § 931.16 is amended by removing and reserving paragraph (b).

[FR Doc. 92–8467 Filed 4–10–92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with two exceptions, of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 32) is intended to incorporate rule changes initiated by the State. The changes are proposed to:

(1) Make discretionary, rather than mandatory, the denial of a permit by the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) if the applicant has ever forfeited a coal or surface mining bond or security;

(2) Create a coal mining performance bond fund;

(3) Enable the Chief to execute reclamation performance bonds as a surety for coal mine operators under the performance bond fund;

(4) Specify performance bond application procedures, performance requirements and provide bond replacement and release criteria; and

(5) Allow a Phase II bond release for all or part of the area affected under a permit.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of the Amendment

By letter dated November 16, 1987 (Administrative Record No. OH–0994), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Program Amendment Number 32 to the Ohio program at Ohio Revised Code (ORC) Sections 1513.07, 1513.08, and 1513.16; a new ORC section at 1513.081; and a new corresponding rule at Ohio Administrative Code (OAC) Section 1501:13–7–09.

On December 18, 1987, OSM published a notice in the **Federal Register** (52 FR 48125) announcing receipt of the proposed amendment and inviting public comment on its adequacy. The public comment period ended on January 19, 1988. The public hearing scheduled for January 12, 1988, was not held because no one requested an opportunity to testify.

By letter dated February 18, 1988 (Administrative Record No. OH–1015), OSM requested additional information from Ohio concerning the solvency of the proposed performance bond fund, the verification of monthly reported coal tonnages, the review of financial reports from mine operators, and the effect of the performance bond fund on Ohio's Reclamation Supplemental Forfeiture Account. A meeting was held on July 14, 1988 (Administrative Record No. OH–1075) to discuss OSM concerns about the proposed amendment with Ohio.

By letter dated August 19, 1988 (Administrative Record No. OH–1090), Ohio submitted additional information responding to OSM's concerns and supporting the proposed amendment. In its response, Ohio provided calculations for the balance of the performance bond fund assuming various levels of coal production and bond forfeiture. Ohio also provided discussion of the procedures to be used to verify mined tonnages, the procedures for review of operator's financial statements, and the effect of the performance bond fund on Ohio's Reclamation Supplemental Forfeiture Account.

Following review of the additional information provided by Ohio on August 19, 1988, OSM forwarded a second set of questions about the performance bond fund to the State in a letter dated November 16, 1988 (Administrative Record No. OH–1157). Ohio responded with additional information by letter dated December 28, 1988 (Administrative Record No. OH–1128). In this response, Ohio discussed the following topics:

(1) The State's legal authority to hold bond indefinitely until reclamation is satisfactorily completed;

(2) Use of interest income to the fund to offset administrative expenses;

(3) The ratio of coal to noncoal acreage to be bonded by the fund;

(4) Estimated bond forfeiture rates during the first three years of the fund;

(5) The nature of the financial information submitted by the mine operator to the State in the application for bond and over the life of the permit;

(6) The State's authority to review financial reports from mine operators; and

(7) The staff and procedures to be used by the State in verifying coal tonnages mined from the permit areas.

On February 9, 1989 (Administrative Record No. OH-1149), OSM and Ohio conducted a telephone discussion of the State's response of December 28, 1988. Specific discussion topics included the ratio of coal to noncoal acreage to be bonded under the fund, bond forfeitures within the first three years of the fund, State verification of mined tonnages, and the exchange of permit information between the State's bonding and inspection personnel.

On March 22, 1989, OSM reopened the comment period to provide the public an opportunity to consider and comment on the amendment in light of the additional information provided by Ohio (54 FR 11746). The public comment period closed on April 21, 1989.

By letter dated September 19, 1989 (Administrative Record No. OH-1214), OSM notified Ohio that the proposed performance bond fund could not be approved as currently proposed because it could not satisfy the requirements of the Federal regulations at 30 CFR 800.11(e), which allow an Alternative Bonding System (ABS). This funding was based on three factors: (1) The proposed bond pool relies on the existing supplemental forfeiture account for any reclamation obligations over $2,500, (2) the average reclamation cost exceeds $5,800 per acre, and (3) the supplemental forfeiture account's balance was less than its obligations. A meeting was held on October 2, 1989 (Administrative Record No. OH-1229), to discuss OSM's decision to disapprove the proposed performance bond fund. By letter dated November 6, 1989 (Administrative Record No. OH-1239), Ohio provided additional information based on Ohio's bond forfeiture study. By letter dated January 30, 1990 (Administrative Record No. OH-1273), Ohio submitted information explaining the relationship between Ohio's various reclamation funds and continued to assert that its bonding system was solvent.

OSM continued to raise concerns over the proposed bond pool and its dependence on the existing Ohio bonding system.

On May 14, 1991, Ohio sent a letter to all coal operators in Ohio. Ohio estimated its reclamation needs at $5,596,169 while its supplemental forfeiture fund's balance was near $4.4 million. Ohio concluded that its bonding system was "nearing the breaking point" (Administrative Record No. OH-1633).

Solvency of an ABS is dynamic. Consequently, the ratio of assets to liabilities fluctuates. As noted in the Administrative Record, there have been discussions and correspondence between OSM and Ohio concerning the Ohio fund's solvency. During the period between January 30, 1990, and October 1, 1991, the Ohio bond pool status was being monitored by the OSM Columbus Field Office which maintained constant contact with Ohio. OSM determined that Ohio's ABS solvency regressed until its liabilities exceeded its assets.

Pursuant to 30 CFR 732.17 (c) and (e), by letter dated October 1, 1991 (Administrative Record No. OH-1598), OSM notified Ohio that the State's approved program no longer meets all Federal requirements concerning alternative bonding systems and that the State must amend its program to restore consistency with SMCRA. Section 509(c) of SMCRA authorizes the Secretary to approve an alternative bonding system (ABS) if it will achieve the objectives and purposes of the otherwise mandatory conventional bonding program. As stated in 30 CFR 800.11(e), this provision means that the ABS must (1) assure that sufficient funds are available to complete the reclamation plans for any areas in default at any time, and (2) provide a substantial economic incentive for the operator to comply with all reclamation requirements. These conditions no longer exist in Ohio as data collected during the last quarter of the 1991 evaluation year indicate that the State's ABS liabilities currently exceed its assets by approximately $1.2 million.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal Regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program. Provisions which are not discussed below concern nonsubstantive wording changes and paragraph notations to relect organizational changes resulting from this amendment.

1. Discretionary Denial of Permits

Ohio proposes to change the existing law at ORC 1513.07(E) to make discretionary, rather than mandatory, the denial of a permit to an applicant who has ever forfeited a coal or surface mining bond or security. To do this, Ohio has amended ORC Section 1513.07(E)(5) to remove subsection (b) and to add the substance of the language of subsection (b) to ORC 1513.07(E)(6). Language has also been added to ORC 1513.07(E)(6) to define what interests constitute ownership or control of a business entity for purposes of ORC 1513.07(E)(6).

The language of the proposed Ohio statute at ORC 1513.07(E)(5) (from which provision (b) has been deleted) specifies that the Chief shall issue an order denying a permit if the applicant has misrepresented or omitted any material fact in the application for the permit. This provision continues to be in accordance with SMCRA at section 510(b)(1) which states that no permit application shall be approved unless the regulatory authority finds that the permit application is accurate and complete.

Ohio is proposing to add to ORC 1513.07(E)(6) language which would allow the Chief to deny a permit if the applicant or others specified have ever forfeited a coal or surface mining bond or security. Section 773.15 of title 30 of the Federal regulations prohibits permit issuance if the applicant has bond forfeitures with unabated violations. The Federal regulations provide that, if the violations are corrected, a permit would not be denied just for previous bond forfeitures. Thus, the listing of bond forfeitures is not an automatic denial of permit. Denial of a permit will depend on other factors. Ohio's proposed language is consistent with 30 CFR 773.15, in that the Chief will not automatically deny a permit for a bond forfeiture. Thus, the Director finds that the proposed amendment is consistent with 30 CFR 773.15 and can be approved.

New language has been added to ORC 1513.07(E)(6) which allows the Chief to deny a permit if the applicant or others specified have ever substantially or materially failed to comply with Ohio's surface mining laws. While there is no direct Federal counterpart to the proposed provision, the Ohio provision is in accordance with SMCRA at section 510(a). The Director finds, therefore, that the proposed provisions of ORC 1513.07(E)(6), which concern the discretionary denial of a permit, are not

inconsistent with SMCRA and the Federal rules and can be approved.

Also, added to the statute at ORC 1513.07(E)(6) is language intended to clarify the concepts of ownership and control as they pertain to ORC 1513.07(E)(6). On May 11, 1989 (Administrative Record No. OH–1332), however, the Director informed Ohio through a letter pursuant to the Federal rules at 30 CFR 732.17 that Ohio must amend its program to be no less effective than the newly promulgated Federal rules concerning ownership and control. OSM requested that Ohio submit either proposed written amendments or a description of amendments to be proposed to address the identified deficiencies and a timetable for enactment. Subsequently, by letter dated June 25, 1990 (Administrative Record No. OH–1333), Ohio submitted Program Amendment Number 41 in response to OSM's letter. Ohio addressed the ownership and control issues at ORC 1513.07(E)(6) (a) through (b)(iii) by deleting these sections in Program Amendment No. 41. The Director, therefore, is not required to make a decision on this part of the amendment as he made his decision when he approved Program Amendment Number 41 on April 19, 1991 (56 FR 16004).

2. Creation of a Coal Mining Performance Bond Fund

Ohio proposes to create a voluntary coal mining performance bond fund consisting of moneys collected from premiums and tonnage fees paid by coal mine operators. A proposed new section ORC 1513.081 has been added to create the fund. ORC 1513.08(B) has been modified to allow an operator to obtain a performance bond from the newly created fund, and the rules to implement the fund are proposed at OAC 1501'13–7–09.

Section 509(c) of SMCRA states that the Secretary may approve as part of a State program an alternative bonding system that will achieve the objectives and purposes of the bonding program pursuant to SMCRA. The implementing Federal rules at 30 CFR 800.11(e) state that the alternative bonding system must meet the following criteria: (1) The alternative must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time; and (2) the alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

The Director finds that the proposed Ohio bond fund system does not achieve the objectives and purposes of the bonding program in section 509 of SMCRA and is less effective than the implementing regulations at 30 CFR 800.11(e) in that the proposed performance bond fund does not provide for funding in an amount sufficient to assure the completion of the reclamation plan in the event of bond forfeiture. As discussed below, and based on an analysis of the proposed bond fund and other information provided by Ohio, the Director has determined that the fund will not accrue at such a rate as to assure that Ohio will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time.

Solvency of the Fund

Assuming fund participation rate of 10 bonds per year at $1,000 per bond, the Fund would accrue $10,000 per year in fund participation premiums. Assuming coal production of 250,000 tons per year and a tonnage fee of $0.50 per ton, the fund would accrue an additional $125,000 in annual tonnage payments. Assuming a 10 percent forfeiture rate, a forfeiture cost of $2,500 per acre, and an annual inflation rate of three percent, the proposed Ohio fund could be expected to be solvent with an accruing balance through the year 2004. Assuming a less favorable forfeiture rate of 25 percent, while maintaining the other assumptions listed above, the fund would become insolvent by the end of 1999. The foregoing conclusion of solvency is not valid, however, because historically, reclamation costs of forfeited bonds in Ohio average in excess of $5,000 per acre. Since payment of reclamation costs required by forfeiture orders by the proposed bond fund is limited at proposed ORC 1513.081(E)(3) to "not more than two thousand five hundred dollars per acre" a shortfall of at least $2,500 per acre will result for every forfeited acre. This shortfall would then become a liability of Ohio's reclamation suplemental forfeiture fund. The approved Ohio statute at ORC 1513.08(A) states that "in the event of forfeiture of bond, and the bond is insufficient to complete the reclamation, the chief shall complete the reclamation in accordance with section 1513.18 of the Revised Code using funds from the reclamation supplemental forfeiture fund." Therefore, each forfeited acre under the proposed bond fund would transfer to the reclamation supplemental forfeiture fund an average financial burden in excess of $2,500 per acre (Administrative Record Nos. OH–1631 and OH–1632).

In a report titled "Forfeiture Project Status Report, Report Summary as of June 30, 1989" (Administrative Record No. OH–1205) Ohio estimated the net supplemental account needs are in excess of four and one-half million dollars. This needs estimate is based on the Phase II obligations of fifteen permits. Based on current statutory limitations at ORC 1513.08(A), the maximum funds held in the supplemental fund is limited to two million dollars; and the maximum replenishment of the supplemental fund is limited to one million dollars annually. Given these limitations, the estimated supplemental fund needs identified by Ohio would require at least three and one-half years to meet. Any additional forfeitures, such as from the proposed bond fund, would, of course, place additional financial burden on the supplemental fund. The bond fund as currently proposed, therefore, cannot assure, as is required by the Federal regulations at 30 CFR 800.11(e)(1), that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. Further, this situation was confirmed in the May 14, 1991, letter to the coal operators from Ohio stating that its bonding system was "nearing the breaking point." The Director finds that the proposed provisions at ORC 1513.081 and the implementing rules at OAC 1501:13–7–09 do not meet the criteria for approval of an alternative bonding system found in section 590(c) of SMCRA and 30 CFR 800.11(e). More specifically, the proposed performance bond fund statute at ORC 1513.081 and the proposed implementing rules at OAC 1501:13–7–09 and other administrative record information submitted by Ohio do not demonstrate that the proposed performance bond fund will have sufficient money to complete the reclamation plan for any areas which may be in default at any time. The Director, therefore, finds that the proposed provisions at ORC 1513.081 and 1513.08(B) and the proposed implementing rules at OAC 1501:13–7–09 are inconsistent with the requirements of SMCRA and the Federal regulations and cannot be approved.

3. Release of Bond on All or Part of a Permit Area

Ohio proposes to revise ORC 1513.16(F)(3)(b) by adding new language which would allow the Chief to grant a Phase II bond release for all or part of an area under a permit. The amendment adds the words "for all or part of the affected area under the permit" at the end of the first sentence in paragraph (b).

The approved Ohio statute at ORC 1513.08(A) authorizes the bonding of incremental areas, and the approved Ohio statutes at ORC 1513.16 (F)(3), (F)(3)(a), and (F)(3)(c) authorize bond release for the entire permit area or parts, increments, of the permit area. In addition, the approved Ohio rules at 1501:13-7-05 clarify and present in detail the procedures to be followed for the release of performance bonds on the entire permit area and on incremental areas. The existing provision at ORC 1513.16(F)(3)(b), however, lacked specific language to make it clear that Phase II bond release could be applicable to all of a permit area or to a part (an increment) of a permit area. The proposed amendment clarifies the provision and improves the consistency among the provisions concerning Phase I, II and III bond release.

Section 590(a) of SMCRA authorizes the incremental bonding of permit areas. Section 519(c) of SMCRA and the implementing regulations at 30 CFR 800.40(c) provide that the regulatory authority may release all or part of a bond for the entire permit area or incremental area. The Director finds that the proposed rule to allow a Phase II bond release for all or part of the area affected under a permit is in accordance with sections 509(a) and 519(c) of SMCRA which allow phased bond release for the entire permit area and on increments of the permit area.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the December 18, 1987 **Federal Register** ended on January 19, 1988. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

The public comment period was subsequently reopened and announced in the March 22, 1989, **Federal Register**. The comment period ended on April 21, 1989. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing requirements of 30 CFR 732.17(h)(ii)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program.

The Department of Labor, Mine Safety and Health Administration, responded with a statement of no conflict. The U.S. Department of Agriculture suggested that OAC 1501:13-7-09(C)(1) (b) and (c) concerning application for bond require additional information concerning the acreage covered by the permit and by the performance bond. The suggestion was that specific acreages for prime farmland, farmland of local importance, and acres of other land be required.

In response, the Director notes that the approved Ohio permit application rules currently require detailed information concerning the total permit acreage and the exact location, extent, and acreage of prime farmland. As discussed in Finding 2, the Director is not approving OAC 1501:13-7-09 and, therefore, it is not necessary to address this comment here.

Other comments submitted by the Department of Agriculture do not pertain to the proposed amendment and, therefore, will not be discussed here.

V. Director's Decision

Based on the above findings, the Director is approving Program Amendment Number 32, as submitted by Ohio on November 16, 1987, with certain exceptions of the provisions determined to be inconsistent with SMCRA and the Federal regulations.

As discussed in Finding 1, the Director is taking no action on proposed ORC 1513.07(E)(6) concerning the definition of ownership and control.

As discussed in Finding 2, the Director is not approving the proposed coal mining performance bond fund and the proposed performance bond fund implementing rules which have been found to be inconsistent with the requirements of SMCRA and the Federal regulations.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Ohio program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Ohio of only such provisions.

VI. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from requirement to prepare a Regulatory Impact Analysis, and regulatory review by OMB is not required.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed

by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 28, 1992.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the Preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (ccc) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(ccc) The following amendment to the Ohio permanent regulatory program, as submitted by letter dated November 16, 1987, is approved with the exceptions identified herein, effective April 13, 1992: Amendment Number 32 which consists of revisions to the Ohio Revised Code (ORC) at 1513.07 paragraphs (E)(5) and (E)(6) concerning the discretionary denial of permits and at 1513.16 paragraph (F)(3)(b) concerning the Phase II bond release for all or part of an area under a permit. The following revisions to the ORC and the Ohio Administrative Code (OAC) regarding the creation of a coal mining performance bond fund as submitted by letter dated November 16, 1987, and with subsequent revisions are not being approved: ORC 1513:081 and 1513.08(B) and OAC 1501:13–7–09.

[FR Doc. 92–8455 Filed 4–10–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rules and the Ohio Revised Code

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Revised Program Amendment Number 46 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise four Ohio administrative rules and one section of the Ohio Revised Code to be consistent with Federal regulations regarding the extraction of coal incidental to the extraction of other minerals.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated February 7, 1990 (Administrative Record Number OH–1383), the Deputy Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio), that OSM had recently promulgated new Federal regulations concerning exemptions for coal extraction incidental to the extraction of other minerals. The Deputy Director required Ohio to modify its regulatory program to remain consistent with the new Federal requirements.

By letter dated April 5, 1990 (Administrative Record Number OH–1384), Ohio responded with questions concerning the Deputy Director's February 7, 1990, letter. OSM provided responses to Ohio's questions by letter dated May 1, 1990 (Administrative Record Number OH–1385).

By letter dated May 31, 1990 (Administrative Record Number OH–1386), Ohio submitted a schedule for submitting an amendment to the Ohio program concerning incidental coal extraction. By letter dated August 2, 1990 (Administrative Record Number OH–1387), Ohio submitted additional questions concerning OSM's new regulations on incidental coal extraction. OSM responded to Ohio's second set of questions by letter dated September 6, 1990 (Administrative Record Number OH–1390).

By letter dated October 12, 1990 (Administrative Record Number 1393), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Ohio Program Amendment Number 46. The amendment proposed changes to three Ohio administrative rules and one section of the Ohio Revised Code regarding the extraction of coal incidental to the extraction of other minerals.

On October 31, 1990, OSM published a notice in the **Federal Register** (55 FR 45809) announcing receipt of Ohio's Program Amendment Number 46 and inviting public comment on its adequacy. The comment period closed on November 30, 1990. The public hearing scheduled for November 26, 1990, was not held as no one requested an opportunity to testify.

By letter dated March 13, 1991 (Administrative Record Number OH–1478), OSM provided Ohio with its questions and comments about the proposed amendment. On April 4, 1991, representatives of Ohio and OSM discussed this letter in a telephone conversation (Administrative Record Number OH–1500).

By letter dated April 15, 1991 (Administrative Record Number OH–1507), Ohio provided its responses to OSM's March 13, 1991, letter and submitted Revised Program Amendment Number 46. In the revised amendment, Ohio reiterated many of the revisions proposed in the initial version of Program Amendment Number 46. In addition, Ohio proposed further revisions to one rule which was not amended in the original submission of the amendment. OSM announced receipt

of the proposed revisions in the May 22, 1991, **Federal Register** (56 FR 23531) and in the same notice reopened the public comment period. The comment period closed on June 21, 1991. The public hearing scheduled for June 17, 1991, was not held as no one requested an opportunity to testify.

By letter dated July 29, 1991 (Administrative Record Number OH–1551), OSM sent its comments to Ohio regarding the proposed revised amendment. In response to OSM's letter, on August 30, 1991 (Administrative Record Number OH–1572), Ohio submitted further revisions to Revised Program Amendment Number 46. OSM announced receipt of the final proposed revisions in the September 25, 1991, **Federal Register** (56 FR 48470) and in the same notice reopened the public comment period. The comment period closed on October 25, 1991. The public hearing scheduled for October 21, 1991, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program. Revisions which are not discussed below correct paragraph letter notations or make minor language changes to improve the clarity of the rules.

A. Revisions to Ohio's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
OAC 1501:13–4–16(A)	Requirements for exemption	30 CFR 700.11(a)(4), 702.11(a)(1), (a)(2).
OAC 1501:13–4–16(B)(2), (B)(3), (B)(4)	Definitions	30 CFR 702.5(b), (c), (d).
OAC 1501:13–4–16(C)	Application requirements and procedures	30 CFR 702.11(b), (c), (d).
OAC 1501:13–4–16(D)(1) through (16), except (10)	Contents of request for exemption	30 CFR 702.12(a) through (p), except (j).
OAC 1501:13–4–16(E)	Exemption determination	30 CFR 702.11(e)(1), (e)(2), (e)(3).
OAC 1501:13–4–16(F)	Administrative review	30 CFR 702.11 (f)(1), (f)(2).
OAC 1501:13–4–16(G)(1), (G)(2)(a), (G)(2)(b)	Requirements for exemption	30 CFR 702.14(a)(1), (a)(2), (a)(3), (b)(1), (b)(2).
OAC 1501:13–4–16(H)	Conditions of exemption	30 CFR 702.15(a) (b), (c).
OAC 1501:13–4–16(I)	Stockpiling of materials	30 CFR 702.16(a), (a)(1), (a)(2), (b)(1), (b)(2) through (b)(2)(ii), (b)(3), (b)(4).
OAC 1501:13–4–16(J)(2)	Public availability of information	30 CFR 702.13(b).
OAC 1501:13–4–16(K)(1), (K)(3), (K)(4)	Reporting requirements	30 CFR 702.18(a)(1), (a)(3) through (a)(3)(ii), (b) through (b)(6).
OAC 1501:13–5–03(A)	Revocation of exemption	30 CFR 702.17(a).
OAC 1501:13–5–03(B)	Revocation of exemption	30 CFR 702.17(b).
OAC 1501:13–5–03(C)(2), (C)(3)	Revocation of exemption	30 CFR 702.17(c)(2), (c)(3).
OAC 1501:13–5–03(D)	Revocation of exemption	30 CFR 702.17(d)(1), (d)(2), (d)(3).
OAC 1501:13–14–01(H)	Inspection of operations	30 CFR 702.15(d), (e) through (e)(3), (f).

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Ohio's proposed rules are no less effective than the Federal rules.

B. Revisions to Ohio's Regulations that are not Substantively Identical to the Corresponding Federal Regulations

1. OAC 1501:13–1–02(S)(1)(a) and ORC 1513:01(G)(1)(a), Definitions

Ohio is proposing to revise the statutory definition of "operation" or "coal mining operation" at ORC 1513:01(G)(1)(a) by eliminating the phrase "during the year" and language regarding the use of minerals extracted for fill material. Ohio also proposes to revise the rule definition of "coal mining operation" at OAC 1501:13–1–02(S)(1)(a) to delete the phrase "during the year" and to eliminate language also proposed for deletion from the statutory definition regarding the use of minerals extracted for fill material. The proposed changes do not render less effective that portion of the amendment concerning the extraction of coal incidental to the extraction of other minerals. Therefore, the Director finds that the revised portions of the Ohio definitions are no less stringent than SMCRA at 30 USC 1291(28) and no less effective than the Federal rule at 30 CFR 700.5 regarding the extraction of coal incidental to the extraction of other minerals.

2. OAC 1501:13–4–16(B)(1), Definitions

Ohio is proposing to add the definition of "cumulative measurement period." The Federal definition at 30 CFR 702.5(a)(1) states that "[f]or purposes of determining the beginning of the cumulative measurement period, subject to regulatory authority approval, the operator must select and consistently use" one of the dates identified at subsections (i) or (ii). Ohio's proposed rule does not have a counterpart to the quoted language. In a March 13, 1991, letter (Administrative Record Number OH–1478), OSM asked Ohio if it would require an operator to consistently use the same date. By letter dated April 15, 1991 (Administrative Record Number OH–1507), Ohio clarified that it would expect an operator to consistently use the beginning date of the cumulative measurement period when updating the initial calculations annually as required in the reporting requirements. In addition, in those cases where an incidental coal operator annually recalculates the cumulative production and revenues, Ohio would require the operator to use production and revenue data calculated from the same beginning date from year to year. Because Ohio has stated in its letter of April 15, 1991, that it will require operators to consistently use the beginning date of the cumulative measurement period and because the remainder of the definition is substantively identical to the Federal definition, the Director finds that the proposed rule is no less effective than the Federal rule at 30 CFR 702.5(a)(1).

3. OAC 1501:13–4–16(B)(5), Definitions

Ohio is proposing to add the definition of "other minerals." The Federal definition at 30 CFR 702.5(e) defines "other minerals" as any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material. Ohio's proposed definition of "other minerals" would mean any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material, or any material mined and used on-site in the construction of waste disposal facilities. The inclusion of "or any material mined and used on-site in the construction of waste disposal facilities" does not

change the intended meaning of the definition of "other minerals" which requires that the substance be mined for its commercial mineral value. This additional exclusion from the definition further limits what can be a commercially valuable substance for exemption purposes. The Director, therefore, finds that the proposed definition of "other minerals" at OAC 1501:13-4-16(B)(5) is no less effective than the Federal definition at 30 CFR 702.5(e).

4. OAC 1501:13-4-16(D)(10), Request for Exemption

Ohio is proposing that the request for exemption shall include stratigraphic cross-sections showing relative position and approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of the innerburden and overburden. The corresponding Federal rule at 30 CFR 702.12(j) requires the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities. Ohio holds that their terms "innerburden" and "overburden" are synonymous with the Federal phrase "other than other minerals." (Administrative Record No. OH-1393). The Director finds, therefore, that the proposed State rule is no less effective than its Federal counterpart because "innerburden" and "overburden" are not classified as other minerals to be extracted for commercial use or sale, which was meant by the term "other than other minerals."

5. OAC 1501:13-4-16(J)(1), Public Availability of Information

Ohio is proposing that all information submitted to the Chief shall be made available in accordance with Ohio's public records statute, Ohio Revised Code (ORC), section 149.43. The remainder of paragraph (J)(1) is substantively identical to 30 CFR 702.13(a). Paragraph (B) of section 149.43 provides that "[a]ll public records shall be promptly prepared and made available for inspection to any person at all times during regular business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time."

The Federal regulation at 30 CFR 702.13(a) provides that "all information * * * be made immediately available for public inspection and copying * * *." The approved Ohio rules at OAC 1501:13-1-10 (A) and (B) concerning the availability of records require that documents be made immediately available to the public. The preamble to the Federal regulation states that the word "immediately" was added to the Federal rule to ensure the timely availability of the application (54 FR 52104, December 20, 1989). Ohio has stated that the proposed rule is consistent with approved OAC 1501:13-1-10, which requires information to be made immediately available to the public. Thus, Ohio's proposed rule with its cross-reference to ORC 149.43, which requires the information to be promptly available to the public, satisfies the Federal rule requirement that the information be timely available. The Director finds, therefore, that the proposed rule is no less effective than the Federal rule at 30 CFR 701.13(a).

6. OAC 1501:13-4-16(K)(2), Reporting Requirements

Ohio is proposing that the cumulative measurement period shall end on the anniversary of the date of issuance of the surface mining permit. The rule would also require that the annual report be filed no later than 30 days after each anniversary date. In some instances, the initial report in Ohio will be due in less than a year, and in some instances the initial report will be due within time frames prescribed in OSM's December 1989, final rule. To avoid confusion in the future, Ohio "will require the simultaneous submittal of the surface mining permit and the request for exemption for incidental coal extraction." (Administrative Record Number OH-1507).

Ohio is a primacy State and, as such, the actual dates Ohio uses for reporting purposes will not be the same as those stated in the Federal rules, which for the most part was April 1, 1990. The Federal rules were not intended to apply to activities that occurred prior to the effective date of a State program amendment (54 FR 52094). Thus, for annual reporting purposes, Ohio's use of the anniversary date of the issuance of the surface mining permit will still fulfill the purpose of 30 CFR 702.18. That is, to enable "the regulatory authority to evaluate compliance of the operation with the exemption criteria on an annual basis" (54 FR 52096). The Director finds that the proposed rule is no less effective than the Federal rules at 30 CFR 702.5(a) and 702.18(a)(2).

7. OAC 1501:13-5-03(C)(1), Revocation of Exemption

Ohio is proposing this paragraph to provide that the Chief shall immediately notify the operator and any person who submitted comments regarding the request for exemption if the Chief will revoke the exemption. The Chief shall also immediately notify the operator and any person who submitted comments if a decision is made not to revoke an exemption. The counterpart Federal regulation at 30 CFR 702.17(c)(1) states that the regulatory authority shall "immediately notify the operator and any intervenors" in the application process. OSM included the notice requirements in the Federal regulation to allow adversely affected persons to seek administrative review. Ohio has determined that those adversely affected persons who comment on the application for exemption are intervenors and must receive notice of decisions to revoke or not to revoke an incidental coal exemption as required under 30 CFR 702.17(C)(1). Intervenors are not defined in the Federal rules. The Director finds that the proposed rule satisfies the notice requirements and is, therefore, no less effective than the Federal rule at 30 CFR 702.17(c)(1).

C. Revision to Ohio's Regulations with no Corresponding Federal Regulations

1. OAC 1501:13-4-16

Ohio is proposing to include an introductory prargraph to OAC 1501:13-4-16. This introductory paragraph discusses the purpose of the rule and the general nature of the restrictions on exemptions granted under the rule of extraction of coal incidental to the extraction of other minerals. This statement of purpose is simply a summary of background information and does not affect the implementation of this rule. The Director, therefore, finds that inclusion of this introductory paragraph under OAC 1501:13-4-16 is not inconsistent with the requirements of SMCRA and 30 CFR part 702 can be approved.

2. OAC 1501:13-4-16(G)(2)(a)(i), Requirements for Exemption

Ohio is proposing to add a requirement that a legally binding agreement be submitted with the initial request for exemption from the requirements of ORC Chapter 1513. There is no Federal counterpart to the proposed rule. By letter dated August 30, 1991 (Administrative Record No. OH-1572), Ohio has clarified that subsection (2)(a)(i) applies specifically to the initial application for the incidental coal exemption and not to existing operations. The Director finds, therefore, that this proposed rule is not consistent with the reporting requirements at 30 CFR 702.18 which require the operator to file the legally binding sales agreement with his annual report.

3. OAC 1501:13–4–16(K)(5), Reporting Requirements

Ohio is proposing to require that the annual report shall include projections for each mining area of the anticipated production of coal and of other minerals in the upcoming 12-month period. There is no Federal counterpart to the proposed rule. The Federal rule at 30 CFR 702.18(b) identifies six items of information that must be included in the annual report for each mining area both on a cumulative and 12-month basis. Ohio has proposed identical counterparts to these six items required by 30 CFR 702.18(b) at OAC 1501:13–4–16(K)(4). The proposed rule at (K)(5) does not change these requirements. In the preamble to the Federal rule on incidental mining exemption, a commenter wanted OSM to require additional information in the annual report. OSM rejected this comment but stated that "[t]he regulatory authorities are, however, free to require or request any documentation necessary to establish or evaluate the status of the exemption" (54 FR 52118). The Director finds, therefore, that the proposed rule is within Ohio's discretion and is not inconsistent with the Federal regulations at 30 CFR 702.18 and can be approved.

4. *OAC 1501:13–4–16(K)(6), Reporting Requirements*

Ohio is proposing to include in the annual reporting requirements the annual submittal of a legally binding agreement for future sales. There is no Federal counterpart to the proposed rule. However, the Federal rule at 30 CFR 702.14(b)(1) states that a legally binding agreement for the future sale of other minerals is sufficient to demonstrate a bona fide anticipation that a market will exist within a 12-month period. OSM's intent in adding this language in the final rule on December 20, 1989, was to ensure that the claim to a future market must be demonstrated by the operator by some evidence that the market will exist in the future (54 FR 52109). Furthermore, the annual submittal of such a contract to Ohio is analogous to the information required by 30 CFR 702.18(b) to be submitted by the operator in the annual report. Submitting a contract for future sales once a year is appropriate because "OSM has concluded that an annual report is the best way of apprising the regulatory authority of the status of the exempt operation, while avoiding the burden of paperwork on the regulatory authority and the operator that would result from more frequent reporting requirements" (54 FR 52118, December 20, 1989). The rule will assist Ohio in determining whether an existing operation is maintaining the condition required at OAC 1501:13–4–16(G)(2)(a). The Director finds, therefore, that the proposed rule is reasonable and is not inconsistent with the Federal regulations at 30 CFR 702.18 and can be approved.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the October 31, 1990, **Federal Register** (55 FR 45809) closed on November 30, 1990. No comments from the public were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

The public comment period was subsequently reopened and announced in the May 22, 1991, **Federal Register** (56 FR 23531) and again in the September 25, 1991, **Federal Register** (56 FR 48470). The public comment periods closed on June 21, 1991, and October 25, 1991, respectively. Comments were received from the Ohio Historic Preservation Office (OHPO). The scheduled public hearings were not held as no one requested an opportunity to provide testimony.

The OHPO was concerned that the proposed amendment would remove a portion of mining operations from the Federally required permitting process. The Director agrees that such mining operations would not need a surface coal mining permit. However, it was Congress' intent to do so. Section 701(28) of SMCRA excludes from the definition of surface coal mining operations the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16–⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale. Operations exempt under this definition are not subject to the permitting provisions or the environmental protection performance standards of title V and abandoned mine reclamation fee provisions of title IV of SMCRA. OSM and Ohio are, however, authorized to inspect and enter sites to verify the validity of claimed exemptions.

OHPO opined that incidental coal mining operations are subject to Section 106 review process and, as such, Federal agencies are required to take into account how these undertakings could affect historic properties and to give the Advisory Council on Historic Preservation (the "ACHP") an opportunity to comment. OHPO was concerned that operators could mine under an initial conditional permit or that an operator could extract large quantities of coal without section 106 review process. OHPO also felt the need for such operations to be under some type of control to insure review by the ACHP. OSM disagrees that State agencies' determinations of exemptions from SMCRA are subject to section 106 of the National Historic Preservation Act (NHPA). Although a district court has ruled in *Indiana Coal Council* v. *Lujan; National Trust for Historic Preservation* v. *Lujan*; Nos. 87–1016, 87–1020 (D.D.C. October 7, 1991), that State permits issued under SMCRA are subject to section 106 of the NHPA as Federal undertakings, that ruling was based upon the extensive and continuing OSM involvement with State-issued permits. By contrast, State agency determinations of exemption from SMCRA constitute a recognition that regulation under SMCRA will not occur.

In addition, whether or not section 106 review will occur with regard to specific operations is not a basis for approving or disapproving State program amendments not expressly related to historic preservation. Section 106 applies to Federal and Federally assisted undertakings when they occur, but is not a mandate that such undertakings exist. The standards for approval of State program amendments are set forth in 30 CFR chapter 7, subchapter C. As long as this amendment satisfies these standards, it may be approved notwithstanding the possible reduction in future Federal undertakings subject to section 106 of the NHPA.

OSM solicited comments from the ACHP on this amendment. The ACHP had no comments (Administrative Record Number OH–1614).

The OHPO also asserted that incidental mining operations be placed under some form of permitting and regulatory control to ensure that such projects are subjected to the full measure of the intent of the section 106 review process. OSM rejects this comment because operations which qualify as exempt are not subject to permitting and regulatory controls under SMCRA, other than to ensure that they satisfy the exemption criteria. A State, however, may implement additional State controls over operations exempt under SMCRA, but such controls would not necessarily insure that section 106 procedures would apply.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were

solicited from various Federal agencies with an actual or potential interest in the Ohio Program. The U.S. Environmental Protection Agency, the U.S. Department of Agriculture, Soil Conservation Service, and the U.S. Army Corps of Engineers responded that they had no comments on the proposed amendment.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA), commented that the proposed amendment may pose some conflicts in that MSHA does not consider a mine to be a coal mine unless the production reports indicate that coal is the major product of the mine. In addition, MSHA commented that the proposed amendment would consider any mining operation a coal mine if the weight of coal extracted is one-sixth or greater of the total weight of minerals extracted. OSM believes that the rules proposed by Ohio concerning the extraction of coal incidental to the extraction of other minerals are no less effective than the Federal rules promulgated on December 20, 1989 and no less stringent than section 701(28) of SMCRA.

No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Revised Program Amendment Number 46, originally submitted by Ohio as Program Amendment Number 46 on October 12, 1990, and revised and submitted by letters dated April 15, 1991, and August 30, 1991.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

January 28, 1992.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 935.15, a new paragraph (bbb) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(bbb) The following amendment to the Ohio regulatory program, as submitted to OSM on October 12, 1990, and revised on April 15, 1991, and August 30, 1991, is approved, effective April 13, 1992: Revised Amendment Number 46 which consists of revisions to the Ohio Revised Code (ORC) at 1513.01 paragraph (G)(1)(a) and Ohio Administrative Code (OAC) at 1501:13–1–02(S)(1)(a) and 1501:13–14–01 and the addition of two new rules at OAC 1501:13–4–16 and 1501:13–5–03 which concern the extraction of coal incidental to the extraction of other minerals.

[FR Doc. 8453 Filed 4–10–92; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 950

Wyoming Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Wyoming Abandoned Mine Land Reclamation (AMLR) Plan (Wyoming Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231 *et seq.* The amendment consists of revisions to the Wyoming Plan so that the State may conduct its AMLR Program in accordance with the provisions of SMCRA, as amended by the Abandoned Mine Reclamation Act of 1990 (Pub. L. 101–508; AMRA) and improves operational efficiency of its AMLR program (Wyoming Program).

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION:

V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Wyoming Plan

On February 14, 1983, the Secretary of the Interior approved the Wyoming Plan. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the February 14, 1983, **Federal Register** (48 FR 6536). OSM announced in the May 25, 1984, **Federal Register** (49 FR 22139), the Director's decision accepting certification by Wyoming that it had addressed all known coal-related impacts in the State that were eligible for funding under the Wyoming Program and therefore could proceed in reclamation of low priority non-coal reclamation projects. The Director accepted Wyoming's proposal that it would seek immediate funding for reclamation of any additional coal-related problems that occur during the life of the Wyoming Program.

II. Submission of Plan Amendment

By letter dated December 16, 1991 (Administrative Record Nos. WY 17–5 and 17–6), Wyoming, at its own initiative, submitted to OSM a proposed amendment to its approved plan pursuant to SMCRA. In order to implement and accomplish the objectives of AMRA, Wyoming proposed revisions to Wyoming Statutes (W.S.) 35–11–1201 through 1308 and chapters I through VIII of the rules of the Wyoming Program.

The proposed amendment consists of revised narratives that replace or modify several sections of the Wyoming Plan. Specifically, Wyoming proposed to amend parts of the approved plan by:

(1) Adding definitions for the terms "adversely affected," "enhancement," and "mineral" to provide interpretation of several terms and phrases in the revised rules;

(2) Reorganizing the Wyoming Program within the Department of Environmental Quality (DEQ) and changing the "Administrator" to the "Director" of DEQ;

(3) Revising the Wyoming Plan to allow reliance on existing appraisal information for small sites located in rural areas where liens will not apply or may be waived;

(4) Adding a Wyoming Program section setting forth the procedures for ranking eligible coal, non-coal, and facility projects for funding;

(5) Creating an AMLR Advisory Board appointed by the Governor to assist DEQ with decisions related to project ranking;

(6) Adding a Wyoming Program section setting forth the conditions for a project to be eligible for AMLR funding, the priority scheme for funding eligible projects, and the authority for the Governor to elevate the priority of a project based upon the Governor's determination of need and urgency; and

(7) Adding a Wyoming Program section setting forth minimum application requirements for proposals for funding under the public facilities provisions and clarifying AMLR funding procedures.

OSM announced receipt of the proposed amendment in the December 31, 1991, **Federal Register** (56 FR 67560) (Administrative Record No. WY 17–7) and in the same notice, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on January 30, 1992. The public hearing, scheduled for January 27, 1992, was not held because no one requested an opportunity to testify.

III. Director's Findings

The Director finds, in accordance with section 405 of SMCRA, that the proposed amendment to the Wyoming Program submitted on December 16, 1991, is not inconsistent with SMCRA and the Wyoming Plan. Further, the Director has determined, pursuant to 30 CFR 884.14, that:

1. The public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. View of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the Plan Amendment.

4. The Plan Amendment meets all requirements of OSM's AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. The Plan Amendment is in compliance with all applicable State and Federal laws and regulations.

IV. Summary and Disposition of Comments

1. Public Comments

In accordance with 30 CFR 884.15(a), the Director solicited public comments and provided an opportunity for a public hearing of the Plan Amendment in the December 31, 1991, **Federal Register** (56 FR 67560). No public comments were received as of January 30, 1992, the close of the public comment period. Because no one requested an opportunity to testify at the public hearing scheduled for January 27, 1992, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited comments from other Federal agencies with an actual or potential interest in the Wyoming Plan.

By letter dated January 2, 1992, the U.S. Geological Survey, stated that the Plan Amendment to the Wyoming Program in response to the AMRA of 1990 has no geologic aspects requiring comment (Administrative Record No. WY 17–9).

By letter dated January 4, 1992, the U.S. Department of Agriculture, Agriculture Research Service, Northern Plains Area, expressed concerns with the Plan Amendment (Administrative Record No. WY 17–8). Specifically, these concerns dealt with administrative issues pertaining to (1) the level of funding for research projects and (2) appointments to the AML Advisory Board as proposed in chapter VI, section 2(c) and chapter VII, sections 5 and 6 of Wyoming's Program regulations. These concerns deal with provisins that are within the discretion of the State under the Wyoming Plan and do not require OSM approval. The Agricultural Research Service also made substantive comments pertaining to (1) grandfathering prior project proposals and (2) defining the terms "need" and "urgent" as proposed in Wyoming's Program regulation at section 6 (c) and (d) of Chapater VII. Wyoming previously raised these two issues before OSM and requested OSM to provide a clear direction in relation to these issues. OSM has determined that the State is within its authority to decide to grandfather specific prior proposals and to allow the Governor discretion in applying the terms "need" and "urgent." The Plan Amendment is consistent with section 411(f) of SMCRA, and the Director is not requiring Wyoming to revise its plan in response to the comments.

By letter dated January 16, 1992, the Bureau of Reclamation stated that the Plan Amendment will not have an effect on Bureau of Reclamation projects or operations (Administrative Record No. WY 17–11).

By letter dated January 27, 1992, the U.S. Bureau of Mines, acknowledged receipt of the Plan Amendment and stated that it had no comments on it (Administrative Record No. WY 17–16).

By letter dated January 29, 1992, the U.S. Soil Conservation Service Acknowledged receipt of the Plan

Amendment and stated that it had no comment on it (Administrative Record No. 17–13).

By letters dated January 30 and 31, 1992, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA), Arlington, Virginia and Denver, Colorado offices, commented that the Plan Amendment does not appear to conflict with any current MSHA regulations (Administrative Record Nos. WY 17–18 and 17–15, respectively).

By letter dated February 5, 1992, the Department of the Army, U.S. Army Corps of Engineers, acknowledged receipt of the Plan Amendment and stated that it had no comment on it (Administrative Record No. WY 17–17).

By letter dated January 8, 1992, the State Historical Preservation Office (SHPO) acknowledged receipt of the Plan Amendment and indicated it had no objection to the Plan Amendment provided OSM and the Wyoming DEQ followed the procedures established in the regulations at 30 CFR 800 (Administrative Record No. WY 17–10).

By letter dated January 15, 1992, the Advisory Council on Historic Preservation (ACHP) expressed concern that the Wyoming Plan does not adequately address the provisions of section 106 of the National Historic Preservation Act of 1990 (NHPA) (Administrative Record No. WY 17–12). The Council understood that the Plan Amendment would supersede the Wyoming Plan. After clarification by OSM that there is no change in the requirements of section 106 of the NHPA with the Plan Amendment, the ACHP indicated it has no comments on the Plan Amendment (Administrative Record No. WY 17–14).

By memorandum dated February 13, 1992, the Bureau of Indian Affairs stated it had no objections to the Plan Amendment because it does not affect Indian lands (Administrative Record No. WY 17–19).

V. Director's Decision

The Director finds that Wyoming's December 16, 1991, proposed amendment to the Wyoming Plan is in accordance with section 405 of SMCRA and the Secretary's regulations at 30 CFR 884.15, and approves it.

The Federal regulations at 30 CFR part 950, codifying decisions concerning the Wyoming Program, are being amended to implement this decision. In addition, the Director is taking this opportunity to codify at 30 CFR 950.35 his decision on Wyoming's certification of completion of all coal-related reclamation that was included in the **Federal Register** on May 25, 1984.

VI. Procedural Determinations

1. National Environmental Policy Act

Approval of State/Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual (516 DM 6, appendix 8, paragraph 8.4B(29)).

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On November 23, 1987, the Office of Management and Budget (OMB) granted OSM exemptions from sections 3, 4, 7, and 8 of Executive Order 12291 for decisions directly related to State/Tribe AMLR plans and amendments. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of Executive Order 12778. Under SMCRA seciton 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 11, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 950.30 is revised to read as follows:

§ 950.30 Approval of Wyoming abandoned mine land reclamation plan.

The Wyoming Abandoned Mine Land Reclamation Plan, as submitted on August 16, 1982, and as subsequently revised, is approved effective February 14, 1983. Copies of the approved program are available at:

Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918.

State of Wyoming, Department of Environmental Quality, Abandoned Mine Lands Division, Herschler Building, Third Floor West, 122 West 25th Street, Cheyenne, WY 82002.

3. Section 950.35 is added to read as follows:

§ 950.35 Approval of abandoned mine land reclamation plan amendments.

(a) Certification by Wyoming of completion of all known coal-related impacts is accepted effective May 25, 1984.

(b) The revisions to the Wyoming plan as submitted to OSM on December 16, 1991, are approved effective April 13, 1992.

[FR Doc. 92–8461 Filed 4–10–92; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–603; RM–7076, RM–7319]

Radio Broadcasting Services; Celina, Watertown, and Baxter, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission dismisses the proposal filed by William O. Barry (RM-7076), requesting the reallotment of Channel 229A from Celina, Tennessee, to Watertown, Tennessee. See 55 FR 00884, January 10, 1990. The counter proposal filed by Bayard H. Walters (RM-7319), requesting the allotment of Channel 229C3 to Baxter, Tennessee, in lieu of Channel 229A at Celina is granted. The coordinates for Channel 229A at Baxter are 36-10-49 and 85-40-29. With this action, this proceeding is terminated.

DATES: Effective May 22, 1992. The window period for filing applications will open on May 26, 1992, and close on June 25, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-603, adopted March 26, 1992, and released April 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended removing Channel 229A at Celina and adding Baxter, 299C3.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-8491 Filed 4-10-92; 8:45am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-4; RM-7880]

Radio Broadcasting Services; Greenacres, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 291B1 for Channel 292A at Greenacres, California, and modifies the license for Station KRAB(FM) to specify operation on the higher powered channel, as requested by Double D Broadcasting Company. See 57 FR 2883, January 24, 1992. Coordinates for Channel 291B1 at Greenacres are 35-29-02 and 118-44-12. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 22, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-4, adopted March 26, 1992, and released April 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 51919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Green Acres, Channel 292A, and adding Greenacres, Channel 291B1.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-8490 Filed 4-10-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-5; RM-7878]

Radio Broadcasting Services; Oak Creek, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 281C3 for Channel 280A at Oak Creek, Colorado, and modifies the license for Station KFMU(FM) to specify operation on the higher powered channel, as requested by KFMU, L.P. See 57 FR 2884, January 24, 1992. Coordinates for Channel 281C3 at Oak Creek are 40-15-20 and 106-57-21. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 22, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-5, adopted March 25, 1992, and released April 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 280A and adding Channel 281C3 at Oak Creek.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-8489 Filed 4-10-92; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 57, No. 71
Monday, April 13, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R-0753]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a new regulation, Regulation DD, to implement the Truth in Savings Act. The act requires depository institutions to disclose fees, interest rates and other terms concerning deposit accounts to consumers before they open accounts. The act requires depository institutions that provide periodic statements to consumers to include information about fees imposed, interest earned and the annual percentage yield on those statements. The act imposes substantive limitations on the methods by which institutions determine the balance on which interest is calculated. Rules dealing with advertisements for deposit accounts are also included in the law.

DATES: Comments must be received on or before June 10, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0753, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the Board's rules regarding the availability of information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, or Jane Ahrens, Kurt Schumacher, or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551. For information about the Board's proposed action concerning the recordkeeping and disclosure requirements under the Paperwork Reduction Act only, contact Frederick J. Schroeder, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3829, or Gary Waxman, OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503, at (202) 395-7340.

SUPPLEMENTARY INFORMATION:

(1) Background

The Truth in Savings Act (contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law No. 102-242, 105 Stat. 2236) was enacted in December 1991. The statute directs the Board to issue final regulations by September 19, 1992, and provides that the statutory provisions and rules adopted by the Board shall apply six months after that date. Rather than delay action under the rulemaking moratorium issued by the President, due to the statutory timetable for implementing the act and the need for adequate time for public comment, the Board is going forward with the rulemaking process at this time.

The Board is proposing regulations for comment, and expects to adopt final implementing regulations by September 19, 1992. Compliance with the law would be mandatory by March 19, 1993.

The purpose of the statute and proposed regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the simple interest rate, the annual percentage yield, and other account terms whenever a consumer request the information and before an account is opened. The statute and regulation also require that fees and other information be provided on any periodic statement the institution sends to the consumer. Rules are set forth for the information contained in advertisements of deposit accounts and advance notice to account holders of adverse changes in terms. The statute and regulation place one substantive restriction on institutions' practices, that is, how institutions determine the account balance on which interest is calculated.

The Board is publishing proposed sample disclosure forms and model clauses to assist institutions in preparing their account disclosures. They appear in appendix B to the proposed regulation.

The Board is requesting comment on whether to eliminate the existing rules in Regulation Q (12 CFR Part 217), that require disclosures (§ 217.4) and that regulate advertisements for interest-bearing accounts at member banks (§ 217.6). As discussed more fully in the adverstising section below, the Board solicits comment on whether Regulation Q's advertising rules should be eliminated or retained as part of Regulation DD. The Board has consulted with the other federal financial regulatory agencies as directed in section 269(a)(1) of the statute, and the agencies are considering whether to retain or eliminate their existing rules dealing with advertisments for deposit accounts.

(2) Proposed Regulatory Provisions

The Truth in Savings Act is quite detailed and, for the most part, the proposed regulation mirrors the statutory requirements. The statute recognizes that implementation of a comprehensive scheme such as this may require some adjustments and, in section 269(a)(3), it authorizes the Board to make "such classification, differentiations, * * * adjustments and exceptions * * * as, in the judgment of the Board, are necessary or proper to carry out the purposes of this Act, to prevent circumvention or evasion of the requirements of this Act, or to facilitate compliance with the requirements of this Act." The statute also authorizes the Board to vary the requirements with regard to several particular types of accounts.

The section-by-section description which follows points out those

provisions that differ in any significant way from the statute—for example, creating an exception to a statutory provision, adding a disclosure, or departing significantly from the language of the statute—and explains why the differences exist. In addition, the section-by-section description in many cases indicates possible alternatives to the positions reflected in the proposed regulation and solicits comment on these alternatives. In those cases where the statute is not specific and parallel rules would be beneficial, the Board has borrowed definitions and provisions from other consumer regulations (for example, Regulation Z (12 CFR Part 226), which implements the Truth in Lending Act, and Regulation E (12 CFR Part 205), which implements the Electronic Fund Transfers Act).

Section 230.1—Authority, Purpose, Coverage and Effect on State Laws

Paragraph (c)—Coverage

The paragraph on coverage reflects the fact that the act and proposed regulation cover depository institutions, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461). Thus the regulation would cover depository institutions such as national banks, state member banks, thrift institutions, and nonmember banks and savings banks, whether federally insured or not. This regulation does not apply to credit unions; those entities will be covered by rules issued by the National Credit Union Administration (NCUA). The act provides that the NCUA shall prescribe substantially similar regulations for credit unions within 90 days of the effective date of regulations established by the Board.

Securities brokers and dealers are not considered depository institutions under the act and proposed regulation. However, if advertisements for deposit accounts are placed by brokers and dealers who are deposit brokers, as that term is defined in section 29(g)(1) of the FDIC Act, they are subject to the advertising rules set forth in § 230.8. (See the supplemental information accompanying the definition of "advertisement.")

Paragraph (d)—Effect on State Laws

Section 273 of the act provides a narrow standard for preemption of state laws. To be preempted, a state law must be inconsistent with the disclosure provisions of the act and the implementing provisions of the regulation. A state law is preempted only to the extent of the inconsistency. While the statute refers only to disclosure requirements, the Board requests comment on whether the same standard should apply to all provisions of the law, including the payment of interest provision.

Section 230.2—Definitions

Paragraph (a)—Account

Section 274(1) of the statute defines an account as "any account offered to 1 or more individuals or an unincorporated nonbusiness association of individuals by a depository institution into which a customer deposits funds, including demand accounts, savings accounts, time accounts, and negotiable order of withdrawal accounts." The Board is proposing to define account as any deposit account available to, or held by, a consumer. The regulation would cover interest-bearing as well as noninterest-bearing accounts. It would include all accounts offered to consumers by depository institutions, whether those accounts are federally or state insured or uninsured. The Board solicits comment on whether the regulation should be limited to insured deposit accounts.

The Board does not believe the Congress intended to cover certain other accounts that may be offered by or through depository institutions, such as mutual fund accounts. Both the findings and purpose provisions of the statute speak of "deposit accounts" offered by institutions, and all of the examples listed in the statutory definition are the more traditional type of deposit accounts.

Similarly, the term "account" would not include a consumer's interest in the securities or obligations of a depository institution or any other entity that are being held by the institution on the consumer's behalf, or offered by the institution to the consumer. For example, the purchase of a government security or an annuity through a depository institution would not be an "account" subject to the regulation.

Some institutions permit consumers to open accounts denominated in a foreign currency. Typically, these accounts are offered as money market accounts, though certificates of deposit may be designated as foreign currency accounts. A consumer may purchase one or more of several currencies, depending on the institution's program. Such accounts are eligible for deposit insurance, but are not insured for losses resulting from exchange rate fluctuations. Institutions may or may not pay interest on these accounts. These accounts may be subject to capital gains or losses due to fluctuations in exchange rates.

When such accounts are offered to or held by consumers (as opposed to businesses), the Board believes they meet the definition of an account and are covered by the regulation. In light of the risk of loss of principal for these accounts and the fact that they are not traditional accounts, consumers may not fully understand how they operate. Thus the Board is proposing special disclosure and advertising rules for these accounts. These proposals are discussed in the supplemental information accompanying § 230.4(b)(9) and 230.8(a).

Paragraph (b)—Advertisement

Under the act, each "advertisement, announcement, or solicitation" relating to an account at a depository institution must comply with specified rules. The act does not define advertisement. Under the Board's proposal, an advertisement (which includes any announcement or solicitation) is defined in the same manner as that term is defined under the Board's Regulation Z. Thus, an advertisement would be any commercial message appearing in any medium (for example, newspaper, television, or radio) if it directly or indirectly promotes the availability of an account.

The Board requests comment on whether some of the savings instrument "rate sheets" that are currently published in newspapers, periodicals, or trade journals should be considered "advertisements." Some rate sheet publishers gather information by simply calling various depository institutions and inquiring about their current rates; to this extent, they do not appear to be the type of commercial message intended to be covered.

The statute cover advertisements "initiated by a depository institution or deposit broker." The Board is proposing to define "advertisement" without regard to the party initiating it. In light of this approach, the Board does not have a definition of deposit broker in the proposed regulation, apart from the reference in § 230.1(c). The Board solicits comment on whether deposit brokers who place advertisements that refer to deposit accounts at depository institutions should be covered by the advertising rules. The question arises since the regulation only covers deposit accounts offered by depository institutions to consumers. If a third party, such as a deposit broker, opens an account (such as a large certificate of deposit) at an institution in its own name and then offers its own accounts to the public, the certificate of deposit does not appear to be a consumer account. (Tax information, for example, would be reported in the name of the

third party.) Thus, an advertisement placed by a third party for its own accounts is not an advertisement for a consumer account. (This circumstance is clearly different from a third party who acts as an agent for a consumer and opens an account for the consumer at an institution—which would be covered by the regulation.) The Board solicits comment on whether non-agent third parties who advertise their own accounts based on accounts at a depository institution should be covered by the advertising rules.

Paragraph (c)—Annual Percentage Yield

The Board proposes that the regulation incorporate a definition of the annual percentage yield substantially the same as that stated in the act. The act defines annual percentage yield as "the total amount of interest that would be received on a $100 deposit, based on the annual rate of simple interest and the frequency of compounding for a 365-day period, expressed as a percentage calculated by a method which shall be prescribed by the Board in regulations." The proposal does not incorporate the reference to a $100 deposit, since the annual percentage yield calculation can be performed with any amount of principal, and the Board believes reference to $100 might be confusing, especially for accounts that have a higher minimum balance requirement to earn interest or that have a tiered rate structure.

In computing the annual percentage yield, the statute requires institutions to use a basis of 365 days. The Board believes this provision requires institutions to calculate an annual percentage yield by using a 365-day year. The Board proposes that the term "annual percentage yield" be used in both advertisements and disclosures to ensure uniformity and facilitate easy comparisons. (If multiple annual percentage yields are stated, for example, for tiered rate accounts, the term "annual percentage yields" may be used.)

Paragraph (e)—Bonus

The Board proposes to define the term "bonus" to encompass any cash, premium, gift, award, or other consideration (except interest due to the application of a periodic rate) regardless of the form the payment takes. Thus, it is intended that anything of value that is given or offered to a consumer, aside from interest, would be a bonus for the purposes of this regulation. Under the proposal an item could be a bonus if a depository institution gave or offered such a premium to a third party, rather than to the consumer.

Paragraph (f)—Business Day

The Board is proposing to define business day as one during which the offices of the institution are open for carrying on substantially all business functions. This definition is the same one used in other regulations of the Board (such as Regulation Z and Regulation E) and the Board believes this same approach would work well for this regulation.

Paragraph (g)—Consumer

The act does not define the term "consumer." It is clear from the act and legislative history that the protections were intended to apply only to consumer purpose—and not business purpose—accounts. For instance, in section 262, strengthening "the ability of the consumer to make informed decisions regarding deposit accounts" is among the act's goals. Moreover, the statutory definition of an "account" is expressly limited to those "offered to 1 or more individuals or an unincorporated nonbusiness association of individuals . . ."

The Board proposes to use the term "natural person" rather than "individual" and to add the term "primarily for personal, family, household, or other non-business purposes" to the definition. A similar definition has worked well in Regulation Z in determining whether credit is for a consumer purpose, and the Board believes it would be equally helpful in determing coverage for deposit products.

The statute does not expressly exclude from coverage accounts held by, or offered to, individuals operating businesses in the form of a sole proprietorship. The Board proposes to *not* cover such accounts, on the grounds that the act is aimed at protecting consumers. On the other hand, an account held by or offered to an unincorporated association of natural persons (such as a softball team or a book club) would be a consumer account covered by the proposed regulation if that account is primarily for non-business purposes. The Board does not believe an account held by an incorporated, not-for-profit organization is covered by the law, since the act limits its protection to unincorporated associations.

If the legal holder of an account is a natural person, and the account is primarily for a personal, family, household, or other non-business purpose, it would be covered by the regulation. The Board requests comment on whether the regulation should cover an account such as a custodial account, in which a natural person (or unincorporated nonbusiness association of persons) is a beneficial owner but the legal holder (the custodian) may or may not be a consumer. There may be circumstances where the act's purposes are served by requiring disclosures for accounts held by custodians that are not natural persons. There may be other custodial accounts, however, such as those held by institutional investors (for example, a pension plan administrator) for numerous consumers, where disclosures are not needed.

Paragraph (h)—Depository Institution and Institution

Section 274(6) of the act defines a "depository institution" as that term is defined in "clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act." The Federal Reserve Act includes in its definition any insured bank or any bank that is eligible to apply to be insured under the Federal Deposit Insurance Act (FDIA). The FDIA definition of an insured bank includes a foreign bank that has an insured branch as well as any other bank with deposits insured in accordance with the FDIA. Based on these definitions, the Board believes the statute's coverage is very broad, and covers both state and federally chartered institutions, regardless of whether or not the institution is insured (by federal, state, or private insurance). Foreign banks that meet this definition also would be covered.

As discussed in § 230.1, the proposed regulation does not apply to credit unions.

Paragraph (i)—Interest

This definition states that bonuses and similar offers do not constitute interest for purposes of the regulation. This differs from the interpretation of the rule in Regulation Q (12 CFR 217.2(d)), which does include bonuses as part of its definition of interest, due to the prohibition of paying interest on demand accounts, and the fact that in that context a bonus is the equivalent of interest. The proposed definition makes clear that a depository institution's practice of charging higher fees to non-account holders than to account holders does not make the differential "interest." Also, an institution's absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with a service is not considered to be a payment of interest.

Paragraph (j)—Periodic Statement

The statute does not define "periodic statement," although the term, or similar

term "account statement," is used in two provisions (sections 266 and 268). Section 266(e) of the statute (which requires a notice to be given to existing account holders) refers to account statements provided on a quarterly basis. The Board has looked to this provision and to requirements in other regulations in defining periodic statement. For example, Regulation E requires a periodic statement to be provided monthly if electronic transfers have taken place, but at least quarterly if no transfer has occurred. In addition, Regulation Z generally provides that periodic statements must be provided at the end of any billing cycle—which must be at least quarterly—for open-end credit accounts. The Board believes this approach has worked well and proposes to define periodic statement as one sent on a quarterly or more frequent basis. The Board solicits comment on whether this is an appropriate time interval, or whether a narrower or broader definition is more appropriate. The Board also solicits comment on whether a longer time interval should be applied to statements sent on accounts such as time deposits.

An example of a periodic statement is a monthly statement for a NOW account which sets forth account information, such as a listing of transactions. On the other hand, regularly providing general service information to consumers which does not discuss specific transaction activity or other aspects of a particular consumer's account (for example, a quarterly newsletter describing services and other deposit accounts) would not be considered a periodic statement.

If an institution sends a periodic statement due to other legal requirements (for example, if the account can be accessed by electomic fund transfers and is covered by Regulation E), then such a statement would be a periodic statement for purposes of this regulation. Also, if an institution provides a combined statement containing both credit and deposit account activity, such a statement would be covered by the periodic statement rules.

Paragraph (k)—Simple Interest Rate

Section 274(3) of the statute defines the "annual rate of simple interest" as "the annualized rate of interest paid with respect to each compounding period, expressed as a percentage." The Board is proposing to simplify the phrase and reword the definition to clarify that the "simple interest rate" is the rate of interest paid without regard to compounding, shown as an annual figure and expressed as a percentage.

Section 274(3) of the act also provides that the simple interest rate may be referred to as the "annual percentage rate." The Board is proposing to require that institutions refer to this figure using the term "single interest rate" and to permit institutions to use the term "annual percentage rate" only in addition to the term "simple interest rate" and only for account disclosures (not in advertisements).

The Board believes it is essential to assist consumers in comparing accounts to require the use of standardized terminology in this area. The Board believes it may be confusing for prospective account holders to see the same figure labeled as the "simple interest rate" in some advertisements and disclosures and as the "annual percentage rate" in others. Also, the term "annual percentage rate," as required to be disclosed under Regulation Z, is commonly understood by consumers to encompass the total cost of credit—including both interest and other finance charges. The Board is concerned that consumer confusion may result if the term "annual percentage rate" is used to designate a simple interest rate for the consumer's deposit account at a depository institution, if the same terminology is used to designate a rate that includes both simple interest and, for example, points, for the consumer's mortgage loan with the same institution. Since the potential for confusion is greatest in advertisements, the Board proposes to permit use of the term "annual percentage rate" only in the account disclosures and then only in addition to the term "simple interest rate." In no cases would an institution be required to refer to the simple interest rate as the annual percentage rate.

Paragraph (m)—Stepped Rate Account

The act defines "multiple rate" accounts, and authorizes the Board to adjust its general annual percentage yield disclosure rules to ensure that meaningful disclosures are provided for such accounts. The Board proposes to define "stepped rate" and "tiered rate" accounts, both of which would be "multiple rate" accounts under the statute. While both accounts involve multiple rates, the characteristics of each have different implications for calculating and disclosing the annual percentage yield.

The Board proposes to define stepped rate accounts as those in which two or more simple interest rates (known at the time the account is opened) will take effect in succeeding periods. An example of a stepped rate account is a one-year certificate of deposit in which a 5.00% simple interest rate is paid for the first six months, and 5.50% for the second six months.

Paragraph (n)—Tiered Rate Account

The Board proposes to define tiered rate accounts as those in which two or more simple interest rates paid on the account are determined by reference to a specified balance level. An example of a tiered rate account is one in which an institution pays 5.00% simple interest rate on balances below $1,000, and 5.50% on balances $1,000 and above. There are two types of tiered accounts which are described more completely in appendix A, Part I, (D).

Paragraph (o)—Variable Rate Account

The statute does not define variable rate accounts, but section 265 of the act authorizes the Board to adjust its annual percentage yield disclosure rules for such accounts. The legislative history accompanying the law also indicates that modifications to the act's advance notice requirement for changes in terms were contemplated for variable rate accounts (see discussion of proposed § 230.5 below). The Board requests comment on how variable rate accounts may best be defined to further the purpose of the act. Two alternative definitions are included in the proposed regulation.

Classifying an account as a "variable rate" has two implications: (1) The Board is proposing certain additional account disclosures for those accounts in § 230.4(b)(1)(ii); and (2) the Board is proposing to exempt rate decreases on a variable rate account from the change in terms rule (see the discussion of changes in terms in § 230.5).

A variable rate account clearly would include one with rates based on either an external or an internal index—for example, if an institution tied rate changes to the 1-year Treasury bill or to the institution's own "prime" rate. The majority of institutions, however, currently set rates based on a variety of factors and do not tie changes to an identifiable index.

The first alternative in the proposed regulation would define a variable rate account narrowly, as one tied to an index (either an external or an internal index).

The Board solicits comment on whether the definition of a variable rate account should be broader, so as to encompass all accounts which, pursuant to an account agreement, permit the institution to change the rate at the election of the institution. The Board is aware that most if not all institutions routinely include a contractual right to

change rates in their account agreements (other than time deposits), although in some cases the right is seldom exercised and holders of such accounts likely consider the account to be fixed rate. The Board is concerned that, if the definition of a variable rate account encompasses all such situations, consumers who view their accounts as essentially fixed rate accounts would not receive advance notice of rate changes.

One way to deal with this is reflected in the second alternative in the proposed regulation. It would treat as fixed rate those accounts where the institution contracts to provide at least a 30-day advance written notice of rate changes. This would provide a way for institutions that prefer to offer—and consumers who prefer to hold—"fixed-rate" accounts to do so, while providing the advance notice the Congress intended. In other cases, where the institution does not commit itself to a 30-day notice, the accounts would be variable rate accounts, and would not require advance notice when rates changed. For those accounts in which the institution does not guarantee the rate for at least 30 days, it would be required to give full disclosure of the variable rate feature when the accounts are opened (under proposed § 230.4(b)(1)(ii)).

The Board considered a variety of other approaches to defining a variable rate account. For example, it could be viewed as one in which the institution expressly provides for the option to change the rate at a specified frequency, such as every week or every month. Adoption of such an approach may not be effective in distinguishing between fixed and variable rates, however, since institutions could add such a "variable rate feature" by simply modifying their agreements to reflect such a right without changing their pricing practices in any way.

Another alternative considered was to define as variable rate accounts those in which the rate had in fact changed a specified number of times during a specified prior period. Although such an approach has the appeal of being based on actual experience, the Board is concerned that compliance would be complicated and cumbersome.

The Board expressly solicits comment on the two alternatives reflected in the proposal, the advantages and disadvantages of each, and any other alternatives.

Section 230.3—General Disclosure Requirements

Paragraph (a)—General

Section 264 of the act requires depository institutions to maintain a written schedule of fees, interest rates and other terms applicable to each class of accounts offered by the depository institution. The statute requires the disclosures to be written in "clear and plain language." The proposed regulation requires information to be disclosed "clearly and conspicuously," the standard required by other regulations adopted by the Board, such as Regulation Z. The Board believes that use of a commonly used and understood standard facilitates compliance with the law and carries out the act's requirement that disclosures be written in clear and plain language. For uniformity, the format requirement of "clear and conspicuous" would apply to all disclosures provided to consumers, including the change in terms notice and information given on periodic statements, and not just the account opening disclosures. The Board also proposes to include a provision requiring disclosures to reflect the legal obligation between the parties in order to provide guidance about the basis for disclosures; this parallels the standard used in Regulation Z. The proposal would require that disclosures be provided in a form the consumer can retain, since that seems to be clearly what the Congress intended in order to facilitate comparison shopping. Disclosures need be made only as applicable. Therefore, disclosures for noninterest bearing accounts would not include disclosure of an annual percentage yield, simple interest rate, or any other disclosures that pertain to interest calculations.

The Board is not proposing a rule dealing with the use of estimates in making disclosures. Regulation Z contains such a provision since many fees are not within the control of the lender, and since the timing of a transaction may not be precisely known when disclosures are required to be provided. Regulation E does not contain a rule permitting estimates, and it seems more analogous to this regulation on this question. Since the fees to be disclosed are those established by the institution and are not a function of the amount deposited by the consumer, the Board does not believe a rule on estimates is needed. The Board solicits comment on this issue.

The proposed regulation provides depository institutions with flexibility in designing the order of the disclosures, so long as the information is presented in a format that allows consumers to readily understand the terms of their own accounts. The disclosures required by the regulation may be made on more than one page and may use both the front and reverse sides, as long as the pages are part of one document. Institutions could use inserts to a document or fill in blanks to show current rates. Since rates may change on a frequent basis and rate information needs to be current, the Board believes requiring such information to be preprinted in a document could impose substantial costs and burdens on institutions, with no particular benefit to consumers.

In designing the account disclosures, depository institutions have several alternatives. Institutions could prepare a single document that contains disclosures for all accounts offered, or prepare different documents for different types of accounts. For example, institutions may provide a single document for all transaction accounts, such as NOW and demand deposit accounts. Institutions that choose to combine information about accounts would have to clearly indicate the terms that apply to the account selected by the consumer. (See, for example, the approach taken in B–3 Sample Form, in appendix B.) Institutions may provide disclosures for each type of account, such as a document that describes all time deposits offered. The regulation also would permit institutions to provide disclosures describing a single account product; for example, an institution offering three different NOW accounts may provide a separate document for each account. In all of these situations, the Board proposes to permit depository institutions to include in the document containing the account disclosures contract terms and other disclosures that relate to the account, such as disclosures required by Regulation E or by Regulation CC (12 CFR part 229), which implements the Expedited Funds Availability Act.

The regulation does not require any particular type size or typeface, nor does it require any term to be stated more conspicuously than any other term in the account disclosures. Sections 230.4(b), 230.6(a) and 230.8 of the regulation would require the "annual percentage yield" (and, in some cases, the "simple interest rate") to be so labeled in account disclosures, periodic statements and advertisements. Apart from this, there is no required terminology.

Finally, the act and regulation do not contain any special requirements regarding whether disclosures may be made in a foreign language rather than

in English. Regulation Z allows creditors in Puerto Rico the option of providing disclosures in Spanish, so long as those that do so furnish disclosures in English upon request. The Board requests comment on whether the purposes of the act would be furthered by permitting institutions to deliver disclosures in other languages (in Puerto Rico or elsewhere), provided that disclosures in English are furnished upon request.

Paragraph (b)—Multiple Consumers

The Board proposes that in the case of an account held by more than one consumer, institutions could provide the account disclosures to any consumer who holds the account. Similarly, if the account is held by a group or organization, depository institutions may provide the disclosures to any one individual who represents or acts on behalf of the group.

Paragraph (c)—Oral Responses to Inquiries

The Board is proposing to add this rule to the regulation, which has no counterpart in the statute. Since consumers may call institutions to obtain rate information, the Board believes it is important for uniformity and comparison shopping that any rates quoted be stated as an annual percentage yield. The regulation would also permit institutions to state the simple interest rate, but would prohibit any other rate. An approach similar to this is used in Regulation Z.

Section 230.4—Account Disclosures

The statute requires institutions to maintain an "account schedule" that is provided to consumers before an account is opened, and under certain other circumstances. The Board proposes to use the more general and commonly understood terminology of "disclosures" (rather than schedule) in connection with the information required to be provided to consumers.

Paragraph (a)—Delivery of Account Disclosures

Paragraph (a)(1)—Account opening. Section 266 of the act requires account disclosures to be provided before an account is opened or a service is rendered. The act also allows the disclosures to be sent within 10 days of "the initial deposit" if the consumer is not physically present when the deposit is accepted and the disclosures have not been provided previously. To simplify the timing rules, the proposed regulation applies the 10-day rule to the provision of services, as well as to opening accounts, and defines the period as 10 business days rather than calendar days. The Board solicits comment on whether business days or calendar days should be used in setting forth the timing rules.

The statute suggests that institutions are required both to "maintain" a schedule and to provide it to consumers in the designated circumstances. The Board believes that by providing disclosures as required by the act and regulation, institutions satisfy the statutory requirement to "maintain" a schedule. Thus, the regulation would not place an independent duty on institutions to "maintain" schedules or disclosures.

The Board believes the provision requiring disclosures to be given before a service fee is imposed covers the infrequent circumstance where a fee is assessed for a service prior to the opening of an account. For example, if an institution obtained a copy of a consumer's credit report and charged the consumer for the report prior to opening the account, the institution would have to provide the consumer with the account disclosures prior to assessing the fee. This provision, however, does not require institutions to give disclosures to existing account holders prior to imposing a service fee connected with the account, such as for stopping payment on a check or transferring funds into or out of an account by wire.

If an account is opened or a service is requested by means such as telephone, wire transfer or mail, the account disclosures must be mailed or delivered within 10 business days of the time the account is opened or service is provided. This time rule would apply, for example, if a consumer opens a time deposit by mailing in the funds. Institutions would comply with the provision if the account disclosures are mailed or delivered to the consumer at the address shown on the records of the depository institution.

The statute states that disclosures need not be provided to the absent consumer if the disclosures were previously provided. The Board believes that institutions may rely on this provision only if the disclosures previously provided contained information about fees, interest rates, and other terms of the account that are still current. The Board requests comment on whether it would be desirable to specify a time limit, for example, 60 days, beyond which prior disclosures would be deemed not to be current—even if they have not changed.

Paragraph (a)(2)—Requests. The act requires that the account disclosures be made available to any person upon request. The proposal implements the act by requiring depository institutions to mail or deliver the disclosures no later than three business days following receipt of a consumer's oral or written request. Requests are likely to come from consumers who are comparison shopping for accounts. While a timing rule of 10 days (business or calendar days) may be appropriate when providing written disclosures to a consumer who has already decided to open an account by mail or telephone, the Board believes it would be more consistent with the act's goals if a consumer's request for account disclosures were fulfilled within a shorter time period, since it is likely the consumer is shopping for an account. Three business days is a timing rule used in Regulation Z for certain transactions, and the Board believes that the rule would work well for this regulation. The Board solicits comment on whether it is necessary to establish a specific time period in which institutions must respond to requests for disclosures, and whether the appropriate period should be three business days or longer, such as 10 business days. (Of course, when the consumer is present at the institution and requests information about an account, the disclosures must be given at that time.)

The Board believes an institution would *not* have a duty to provide account disclosures if a consumer merely asks about current rates for an account. For example, the common practice of telephone inquiries about rates and yields on certificates of deposit would not trigger an institution's duty to send disclosures to the caller—so long as the consumer does not ask for such information to be sent.

Paragraph (a)(3)—Renewals of time deposits—Paragraph (a)(3)(ii)—Time deposits that renew automatically. The renewal of a time deposit is the equivalent of opening another account, and requires a set of disclosures about the new account, as stated in paragraph (a)(3)(i) of this section. The act requires account disclosures to be provided to consumers at least 30 days prior to the maturity of a time deposit that is renewable without notice from the consumer ("automatically renewable" or "rollover" time deposits). The proposed regulation requires depository institutions to mail or deliver the account disclosures described in § 230.4 to such consumers, but creates an exception for short-term time deposits. The proposed regulation would not require institutions to provide an advance copy of disclosures for automatically renewable time deposits with a maturity of three months or less. In such cases, institutions would provide

disclosures no later than 10 business days after the account is renewed.

The legislative history accompanying the act recognizes that the Board may wish to establish special rules for short-term time deposits. (See the Committee Report accompanying H.R. 2654, of the Committee on Banking, Finance and Urban Affairs, September 12, 1991.) Two policy reasons for providing advance notice to consumers with automatically renewable time deposits are: (1) To remind the consumer that the account is nearing maturity and that funds will be reinvested for a set period of time (thus limiting access to funds) if the consumer does not act; and (2) to give the consumer an opportunity to comparison shop before reinvestment occurs. The Board believes consumers with short-term accounts do not have the same need of a reminder of impending maturity as do those with longer term instruments. Furthermore, a consumer may derive little or no benefit by receiving a second virtually identical set of disclosures, for example, 15 days after purchasing a 45-day certificate of deposit. In addition, compliance with a 30-day advance notice requirement would literally be impossible for very short-term instruments (such as 7-day certificates of deposit).

The Board solicits comment on whether the proposed exception from advance disclosures should be made for short-term accounts, and, if so, whether a three-month period is the appropriate cutoff.

The Board considered other alternatives for creating an exception from the advance disclosures for short-term automatically renewable deposits, such as a tiered approach. For example, institutions could be required to give account disclosures 30 days prior to maturity for deposits with a maturity greater than six months, 15 days for accounts with a maturity between one and six months, and no advance disclosures for accounts less than one month. The Board solicits comment on this tiered approach, as well as the timing requirements and cutoffs that might be used in such an approach.

One problem presented by the 30-day advance disclosure requirement for both short- and long-term accounts is that the simple interest rate and the annual percentage yield generally will not be known at the time disclosures must be given. The Board does not believe the statute requires institutions to "lock in" or guarantee the rates for an account at the time of the advance notice. The Board proposes as an alternative to stating the simple interest rate and the annual percentage yield in effect at the time the advance notice is sent, that institutions instead state that the simple interest rate and the annual percentage yield for the account have not yet been determined, the dates when they will be determined, and a telephone number the consumer can call to obtain the simple interest rate and the annual percentage yield that will be paid when the account is renewed. The Board believes this approach would facilitate comparison shopping.

The Board considered an alternative approach: requiring institutions to provide consumers with an annual percentage yield that is current when the notice is provided, but that may change before the time deposit renews. The Board is concerned, however, that consumers might believe the annual percentage yield disclosed in an advance notice would be the annual percentage yield applicable for the renewed account. Since the annual percentage yield could fluctuate between the time the disclosures are sent and the renewal date, stating the rate at the time of mailing could thus be misleading. The Board believes consumers would be better served by receiving the actual annual percentage yield that will apply, even if they must contact the institution to do so. Furthermore, since consumers who received an advance annual percentage yield would likely have to call the institution to determine the current annual percentage yield at the time of renewal anyway, the alternative of including the most recent annual percentage yield appears to be of little benefit to consumers.

Institutions with short-term time deposits proposed to be exempt from the advance disclosure rule would still be required to provide disclosures under the general rule (within 10 business days after the account is renewed). The Board proposes, however, that if institutions choose to provide advance account disclosures 30 days prior to the rollover date for those accounts, additional disclosures would *not* have to be provided at renewal—even if the exact simple interest rate and annual percentage yield had not been disclosed earlier. The Board solicits comment on this proposal.

Paragraph (a)(3)(iii)—Time deposits that renew by consumer request. For non-automatically renewable time deposits (that is, those that are renewed only if the consumer affirmatively requests the institution prior to or at maturity to renew the account), institutions would provide account disclosures in accordance with the normal timing rules—within 10 days of renewal if not done in person.

Paragraph (b)—Content of Account Disclosures

Paragraph (b)(1)—Rate information—Paragraph (b)(1)(i)—Annual percentage yield and simple interest rate. Institutions would be required to disclose the "annual percentage yield," using that term, computed in accordance with appendix A, Part I. Institutions also would be required to disclose the "simple interest rate," using that term, and would be permitted to use the term "annual percentage rate" in addition to the simple interest rate. (See the discussion in the supplementary information accompanying § 230.2 (c) and (k) regarding the proposal to use standardized terminology for these figures.) Institutions must also disclose the period of time the simple interest rate will be in effect. This requires institutions to state the length of time, if any, the institution guarantees that this rate will continue to be paid after the account is opened. If an institution does not guarantee a rate for any period of time beyond the day the account is opened, the Board does not propose to require that fact to be stated, since the variable rate disclosures would reflect this fact.

If an institution sets a minimum balance to earn interest, for example $400, the institution would not have to state that the annual percentage yield is 0% for those days the balance in the account drops below $400.

In the case of stepped rate accounts, each simple interest rate and the period of time each will be in effect would be provided. For example if an institution offered a 1-year certificate of deposit with a simple interest rate of 5.00% for the first six months and 5.50% for the second six months, it would disclose both simple interest rates, the corresponding annual percentage yield (5.39%, assuming interest is compounded daily), and the fact that each simple interest rate would be in effect for successive six month periods. An institution offering tiered rate accounts would disclose each simple interest rate along with the corresponding annual percentage yield (or range of annual percentage yields if appropriate) for that specified balance level. For example, if an institution pays a 5.00% simple interest rate for balances below $1,000 and a 5.50% simple interest rate for balances $1,000 or above, both rates would have to be provided, as well as the annual percentage yields that would apply to the account. (See appendix A for the calculation of the annual percentage yields for stepped rate and tiered rate accounts.)

Paragraph (b)(1)(ii)—*Variable rates.* The statue does not expressly require specific additional disclosures for variable rate accounts. (See the supplemental information to § 230.2(o), where a variable rate account is defined.) Sections 264(d) and 265(2) of the act, however, recognize that the Board may wish to prescribe specific disclosures for variable rate accounts. The Board proposes to require certain basic information about a variable rate feature in the account disclosures. These disclosures are similar to the abbreviated variable rate requirements for open-end credit found in Regulation Z.

Institutions offering variable rate accounts would be required to state that the simple interest rate and annual percentage yield may change. They would also have to explain how the simple interest rate is determined. For example, if the simple interest rate is tied to the 1-year Treasury bill plus or minus a specified margin, the index must be clearly identified and the specific margin stated. If "variable rate account" is defined broadly (see the discussion of § 230.2(o) above), an institution that contractually reserves the right to change rates and does not tie changes to an index would disclose that rate changes are solely within the institution's discretion. Depository institutions would also be required to explain the frequency with which the simple interest rate may change. For example, if the institution retains the right to change the rate on a weekly or monthly basis, that would be stated. Institutions that reserve the right to change rates at any time would state that fact.

If the deposit contract places any limits on the amount the simple interest rate will change at any one time or for any period, that would be stated. For example, if the institution places a floor or ceiling on rates or provides that a rate may not decrease or increase more than a specified amount during any time period that would be disclosed.

The proposed regulation refers to the simple interest rate rather than the annual percentage yield in discussing the variable rate disclosures. The Board believes this is more accurate since changes in the annual percentage yield derive from changes in the simple interest rate.

Paragraph (b)(2)—Time requirements. This provision requires institutions to state any time requirement for time deposits, that must be met to obtain the annual percentage yield. Thus, an institution would state the maturity date for certificates of deposit.

Paragraph (b)(3)—Compounding and crediting. The proposed regulation requires institutions to disclose the frequency with which interest is compounded and credited. If the frequency of either would change if the consumer does not meet a minimum time requirement, or under any other circumstance, such frequency would also have to be disclosed. (See the supplemental informaiton accompanying § 230.7(b) for a discussion of crediting practices.)

Paragraph (b)(4)—Balance information—Paragraph (b)(4)(ii)—Minimum balance requirements. This provision requires institutions to disclose any minimum balance required to open the account, to avoid the imposition of fees, or to obtain the annual percentage yield. For example, if an institution provides that a $3 fee will be assessed if the average daily balance drops below $500, that provision would have to be disclosed. Institutions would also have to describe the method they use to determine that balance. The explanation of the balance computation methods can be combined with the disclosure under paragraph (b)(4)(ii) if the methods are the same. Institutions would not be required to describe the method used to determine the balance needed to open the account, since it is simply the dollar amnount that must be deposited by the consumer.

Paragraph (b)(4)(ii)—Balance computation method. Institutions would be required to describe the method used to determine the balance on which interest is paid. (see discussion of § 230.7(a) regarding permissible balance computation methods.) Thus, if the institution uses the daily balance method it would state that it uses the daily balance method and could describe it as one in which interest is computed by applying a periodic rate to the principal balance in the account each day. If it uses the average daily balance method the institution would state that and describe the method as one in which interest is computed by applying a periodic rate to the average balance in the account for the period or cycle, with the average balance calculated by adding the balance in the account for each day of the period or cycle, and dividing that sum by the number of days in the period or cycle.

The Board solicits comment on whether institutions also should be required to disclose when they begin to accrue intrest on noncash deposits. For example, some institutions begin to pay interest on the day such a deposit is received by the institution (sometimes called the "ledger balance" method). Others begin paying interest no later than the business day specified in section 606 of the Expedited Funds Availability Act and its implementing Regulation CC (the "collected balance" method).

Paragraph (b)(5)—Fees. The statute requires disclosure of fees that may be assessed against the "account holder" as well as against the account. The Board believes the wording of the proposal, which requires disclosure of all fees that may be assessed in connection with the account, captures the same information required by the statute.

The statute requires the Board to specify, in the regulation, which fees must be disclosed. Since the proposal requires all fees assessed in connection with the account to be disclosed, the Board is not proposing to list in the regulation every fee that might be imposed. The proposed regulation does not mandate terminology for fees, and the Board does not believe that all fees could be identified by name in the regulation in any event. Institutions use different names to describe the same type of fee. For example, a monthly fee imposed regardless of the consumer's balance or activity might be identified as a "monthly service" fee, a "monthly maintenance" fee, or simply "monthly" fee.

The proposed regulation requires institutions to state the "conditions" under which the fee may be imposed. The Board believes that typically the name and description of the fee will satisfy this requirement. For example, if an institution charges a $.25 fee for each ATM withdrawal from an account, and describes it in that manner, no further information need be provided.

While the Board believes any attempt to list all fees by name would be ineffective, the Board is providing guidance as to the types of fees that are and are not "assessed in connection with the account." Fees that may be assessed in connection with the account wuld include, for example, maintenance fees, fees charged for each check written on an account, fees to obtain or use an access device (such as a debit card), fees due to lack of account activitiy for any period of time, wire transfer fees, and fees to have checks printed. The type of fee required to be disclosed under this section is a broader category than the "maintenance or activity fee" discussed in the advertising rules in § 230.8(a), under § 230.4(b)(5), institutions would disclose fees relating to checks that have been returned unpaid and fees to stop payment on a check, even through these would not be

deemed an "activity" or "maintenance" fee for purposes of § 230.8(a).

Fees that may be charged to a consumer for services unrelated to the account—and that would be assessed against nonaccount holders—such as fees to purchase a cashier's check or to lease a safe deposit box are not required to be disclosed. Such fees need not be disclosed even if the amount of the fees differ for account and nonaccount holders.

Paragraph (b)(6)—Transaction limitations. The statute requires institutions to disclose the "terms and conditions * * * and account restrictions" applicable to accounts. The Board believes this requires institutions to state any limitations on the number or amount of deposits or withdrawals, or checks that may be written on an account for any time period. If an institution does not permit withdrawals or deposits (for example, for a time deposit) that fact would have to be stated.

Paragraph (b)(7)—Early withdrawal penalties. Proposed § 230.4(b)(7) implements section 264(c)(10) of the statute. The act requires institutions to disclose any requirement relating to the nonpayment of interest, including any early withdrawal penalty. The statute places no limitation on how early withdrawal penalties are calculated. The Board proposes to limit this requirement to time deposits, although the statute does not explicitly do so, since an early withdrawal contemplates a maturity date, which exists only in time deposits.

Section 264(c)(9) of the statute requires institutions to provide a statement, if applicable, that interest that has accrued but not been credited to the account at the time of a withdrawal will not be paid (or credited) due to the withdrawal. The regulation does not contain a parallel provision because, to the extent this is read to refer to a practice other than the imposition of early withdrawal penalties, if appears to conflict with section 267 of the statute. As discussed below in connection with § 230.7(a), section 267 of the statute requires institutions to calculate interest on the full amount of principal in the account each day and prohibits calculating interest using methods such as the "low balance" method. The Board believes the Congress did not intend the disclosure provisions of section 264 to be interpreted as overriding the general rule regarding payment of interest. Thus, the Board believes institutions may not fail to pay interest on amounts withdrawn, and so this disclosure is inapplicable. As stated above, however, institutions may impose early withdrawal penalties on time deposits and may use any method they choose to calculate the amount of the penalty. (Model clause B-1(h), in appendix B, provides three examples of how early withdrawal penalties may be determined.)

Paragraph (b)(8)—Renewal policies. For time deposits, the Board proposes to require institutions to include a statement of whether or not the account will automatically renew at maturity. The statute does not expressly mandate disclosures of an institution's policies about renewal, but does require institutions to disclose the "terms and conditions" applicable to accounts generally. In addition, section 264(d) of the act recognizes that the Board may wish to require information to be given regarding renewal policies for time deposits.

The Board believes it is important for consumers to be informed whether a time deposit will automatically renew or whether the consumer must contact the institution at a later time to renew an account, since time deposits limit the consumer's access to his or her funds in a way other accounts do not. The Board also proposes to require institutions to disclose what will happen to funds after maturity if the consumer does not renew the account, in the case of "non-rollover" accounts. For example, an institution might disclose that the funds will be placed in a non-interest bearing account. The Board solicits comment on whether institutions also should be required to disclose whether the rollover account has a "grace period" (a period after maturity during which the consumer may withdraw the funds without being assessed a penalty) and the length of such a period.

Paragraph (b)(9) Potential loss of principal. As discussed in the definition of "account" in § 230.2, the Board believes accounts denominated in a foreign currency that are offered to or held by consumers are covered by the statute. The Board believes that in light of potential changes in exchange rates, consumers are especially in need of certain disclosures to ensure they are aware of how these products operate. Any significant decline in the value of the currency may result in a loss of principal for the consumer, which is typically not a risk associated with other accounts covered by the law.

For these—and any other accounts offered—that involve the risk of loss of principal (other than when that "loss" is due to an early withdrawal penalty for a time deposit), the Board proposes to require institutions to disclose this fact. Thus for foreign currency accounts, institutions would state that fluctuations in exchange rates of foreign currencies may result in a loss of principal. The Board solicits comment on whether institutions should also state that any such loss is not covered by deposit insurance.

Paragraph (c)—Notice to existing account holders. Section 226(e) of the act requires institutions to include a notice on or with any regularly scheduled periodic statement sent to existing account holders "within" 180 days of issuance of the regulation. Section 269(a) of the act provides that regulations adopted by the Board shall take effect six months after they are published in final form. Section 269(a)(4) of the act provides the law "shall not apply with respect to any depository institution before the effective date of regulations prescribed by the Board." Despite the language in section 226(e), the Board believes the general rule that compliance duties do not begin until six months after the Board has adopted final regulations should apply to the notice given to existing account holders as well as to all other provisions. Otherwise, institutions would be required to include a notice to existing account holders prior to the effective date of the regulation. The Board believes requiring institutions to provide this notice before disclosures are required to be available could be confusing to consumers who might request the disclosures. Furthermore, consumers who open accounts before the effective date of the regulation but after the mailing date of the periodic statement in which the notice was sent would not receive disclosures or be alerted to their availability. The Board therefore proposes to require institutions to give the notice on or with the first periodic statement sent to existing account holders after the effective date of the final regulation. The Board solicits comment on this approach.

The notice required by this section need only be provided once and informs current account holders that they may wish to request terms and conditions about the account. If the institution receives a request, it would provide the account disclosures described in § 230.4, including the current simple interest rate and annual percentage yield for the consumer's account. As an alternative to including this notice on a periodic statement, the Board proposes to permit institutions to send the account disclosures themselves, as long as they are sent with the periodic statement.

The statute requires that the notice state both that the account holder has a right to request disclosures and that he

or she may wish to make such a request. The proposal merely requires a statement that the account holder may wish to request the disclosures.

Section 230.5—Advance Notice of Change in Terms and Advance Notice of Maturity

Paragraph (a)—Change in Terms

Section 266(c) of the act requires institutions to send a 30-day advance notice to the consumer of any change in the items required to be disclosed in the account disclosures if the change might reduce the annual percentage yield or adversely impact the consumer. The proposed regulation requires a written notice describing the change and its effective date to be sent 30 days before the effective date of the change. For example, if an institution increases the minimum balance required to earn interest or to avoid imposition of a fee or increases the fee it charges for stop payment orders, an advance notice must be provided. The notice must be given whenever a change occurs after the account disclosures are given. The rule would apply to all accounts, not solely accounts opened after the effective date of the regulation.

The notice requirement applies only to items required to be included with the account disclosures. For example, if an institution reduces any grace period for rollover certificates of deposit—a term not required to be stated under proposed § 230.4(b)—a change in terms notice would not be required. (See the discussion of whether any grace period should be disclosed in § 230.4(b)(8), however.) If a combined disclosure statement for two types of accounts was initially provided (and indicated which terms applied to each account), and the institution later changed a term for one of the accounts, the change in terms notice would need only be given to those consumers holding that type of account, and not the holders of the second type of account.

The Board solicits comment on whether an exception to the change in terms notice requirements should be made for rate changes that occur in variable rate accounts. Section 265 and 269 of the act authorize the Board to make exceptions to the act's requirements for variable rate accounts, and the Committee report accompanying H.R. 2654 of the House Committee on Banking, Finance and Urban Affairs indicates the change in terms requirement was not intended to apply to changes in the simple interest rate (and corresponding changes in the annual percentage yield) for variable rate accounts. (See discussion of this issue in § 230.2(o).) The Board believes that requiring an advance change in terms notice for changes to the simple interest rate in variable rate accounts may be very burdensome to institutions, and may reduce the products available to consumers. As discussed earlier under § 230.4(b)(1)(ii), the Board is proposing to require institutions to disclose certain information about variable rate features, so consumers will be aware of the potential for rate changes and how often they can occur. In addition, where periodic statements are sent for accounts (such as for NOW or money market accounts), the consumer will receive information about the annual percentage yield that will reflect rate changes that occurred. Commenters are requested to address the advantages and disadvantages of requiring an advance notice of rate changes for variable rate accounts.

The Board is concerned, however, that in cases where periodic statements are not sent for variable rate accounts—such as a passbook savings account—considerable time may pass before consumers learn about rate changes on their accounts. Thus, the Board solicits comment on whether institutions should be required to send a notice after the rate is decreased on a variable rate account, if periodic statements are not furnished. Comment is also requested on whether the subsequent notice requirement should extend to variable rate time deposits where the consumer has agreed to keep funds on deposit until maturity. Comment is requested on the appropriate time period for sending such a notice, such as within 30 days after an adverse change.

In addition to variable rate accounts, there is another situation in which the Board is proposing that a change in terms notice not be required. As discussed earlier, institutions must provide account disclosures 30 days before maturity for rollover time deposits. (See discussion of § 230.4(a)(3)(ii).) Since the Board is not proposing to require institutions to state the exact simple interest rate and annual percentage yield with the other disclosures, the Board believes a change in terms notice should not be required if the simple interest rate and the annual percentage yield change from the date the disclosures are provided to the date the consumer opens the account. Of course, if other terms change, the 30-day notice would have to be provided.

Paragraph (b)—Notice of Maturity for Certain Time Deposits

As discussed earlier under § 230.4(a)(3)(ii), the act requires that account disclosures be provided to consumers 30 days prior to the maturity of an automatically renewable time deposit. The act does not address whether any notice or disclosures should be provided to consumers prior to the maturity of a time deposit that renews only upon the consumer's request at the time of maturity. The Board is proposing to require a brief advance notice to be sent to consumers holding such time deposits. The proposed notice would require depository institutions to identify the maturity date of the time deposit and explain to the consumer what will happen to the funds after maturity if the consumer does not renew the account. The Board believes it is important for consumers to receive a notice of pending maturity, especially since a periodic statement or other reminder may not be provided. The rule would apply to existing time deposits as of the effective date of the regulation.

The Board would not require such a notice for short-term time deposits, however, since there does not seem to be a need for a reminder in such cases. The proposal uses the same definition of short-term time deposit (three months or less) as is used in § 230.(4)(a)(3)(ii) dealing with account disclosures for automatically renewable time deposits. It also uses the same timing rule; that is, notices must be mailed or delivered at least 30 days and not more than 60 days before maturity. Of course, if the time deposit is renewed, the disclosures required by § 230.4 must be provided to the consumer prior to renewal (or within 10 business days thereof, if the consumer does not renew in person at the institution).

The Board solicits comment on whether such a prematurity notice should be provided, whether an exception for short-term deposits is appropriate, and whether a short-term time deposit should be defined as three months or less.

Section 230.6—Periodic Statement Disclosures

Section 268 of the act requires depository institutions to include specific information on or with each periodic statement provided to consumers. The Board does not believe the act requires periodic statements to be sent by an institution, but requires that if an institution sends a periodic statement certain information must be included. (The statute does not define a periodic statement. See the definition in § 230.2(j) above.) This requirement applies to existing accounts as of the effective date, as well as to new accounts opened after the effective date.

The information listed in this section would be given only to the extent applicable; for example, a periodic statement for a non-interest bearing account would not include interest or an annual percentage yield.

Paragraph (a)—Annual Percentage Yield Earned

The annual percentage yield calculation as used for both advertising and account disclosures is an annualized rate that reflects the frequency of compounding, but it is not based on an actual account balance. The act requires that "the annual percentage yield earned" be included on the periodic statement. Several options were considered by the Board in determining what would be the most appropriate way of calculating this figure for the periodic statement. While the Board proposes the first method discusssed below, other alternatives are set forth.

Annual percentage yield earned reflecting relation of interest to the average daily balance. The Board proposes to require that the annual percentage yield reflect the relation between the interest actually earned during the statement period to the average daily balance for the period. This figure would not reflect any fees imposed during the statment period or bonuses earned. The figure would show true interest earnings for a particular period by showing the relationship between the actual interest earned and the actual balance maintained during that period. It would also capture all rate changes that occurred.

This method would produce a single composite annual percentage yield for tiered rate accounts, demonstrating the effect of the institution's tiering method on total earnings. Thus, institutions that pay a lower simple interest rate on deposits up to a certain level, and a higher rate only on amounts above the cutoff figure, would show a lower annual percentage yield for a given balance than would institutions that pay the same higher rate for the entire balance in the account if the balance exceeds the cutoff figure.

In spite of these advantages, this method has drawbacks. This approach would not provide a figure the consumer could use to verify earnings for the period if multiple rates were used. The figure also would not show rate fluctuations during the period.

This method would produce, however, a single figure that shows the true interest earnings for the period. Thus the impact of minimum balance requirements to earn interest, tiering structure, as well as differing rates applied during the cycle, would all be reflected in a single yield figure.

Annual percentage yield earned as a net earnings figure. A second option would require the annual percentage yield to represent a new earnings figure by taking the total interest paid during the period, adding cash bonuses paid, subtracting all fees imposed during the period, and dividing the difference by the average daily balance for the period to obtain a percentage figure.

The calculation might be more realistic and useful to the consumer to see what happened during a particular cycle, as compared to an annual percentage yield that factors in only interest. This method presents several problems, however. This option raises the issue of whether all fees required to be disclosed should be factored into the annual percentage yield. For example, should a stop payment fee or a fee for writing a check on insufficient funds be included in the calculation? If not, there would appear to be no simple test for determining which fees should be reflected in the computation of the annual percentage yield. Including fees in the calculation could mean that for some periods there might be a 0% (or even a negative) annual percentage yield. This approach would raise difficult issues about including the value of bonuses—particularly those paid in merchandise. Finally, the Board believes that using the same terminology to describe different types of annual percentage yield figures (one on periodic statements and another in advertisements and opening account disclosures) would be confusing to the consumer since different information would be factored into the calculation—only one taking into account fees and bonuses.

Like the first alternative, this approach does not provide the consumer with a way to verify that the rate was correctly applied to the account. It also does not show rate fluctuations within the period for accounts where rates change. Comparing the annual percentage yield earned with the annual percentage yield advertised by other institutions would be difficult, if not impossible, since the annual percentage yield in advertisements and account disclosures is calculated without regard to any fees or bonuses.

Annual percentage yield earned reflecting historical rate information. A third option considered by the Board would use the same general annual percentage yield calculation for the periodic statement as is used for advertising and initial disclosures. This figure would not take into account the precise amount of interest earned or the relation of the interest to the actual balance in the account during the period, or the imposition of fees or payment of bonuses. Thus, the annual percentage yield would simply reflect the institution's most recent simple interest rate plus any compounding frequency for the account.

This third option would provide the most accurate description of fluctuating rates during a period by detailing the rates applied during the cycle. The annual percentage yield could easily be compared with the advertised rates of other institutions and would require only one approach for the annual percentage yield calculation for opening disclosures, advertising and periodic statements.

This method has its drawbacks as well. It would be even less useful to the consumer than the first two alternatives to verify earnings for the period, since it would not reflect factors such as minimum balance requirements (and the statute does not require balance information to be given on the periodic statement). In addition, this method might require providing multiple annual percentage yields (possibly a large number for an account that had both variable and tiered rates) that could be confusing to consumers and burdensome to institutions. Arguably this figure would not show the annual percentage yield "earned" as contemplated by the statute. Finally, it would not provide information about the impact of a tiered rate structure on the consumer's actual earnings.

Proposal. The option proposed to be used by the Board is the first one described above, an annual percentage yield that shows the relationship between the interest earned and the balance in the account for the cycle. The proposal carries over the general concept of the annual percentage yield used in advertising and the opening account disclosures which measures only the interest earned. In the periodic statement, however, it would show the relation between the actual interest earned and the balance because that information is known at that time. This approach would show in a single figure how well the consumer's account performed during the period, reflecting the true rate earned on tiered accounts, the impact of rate changes, and the effect of minimum balance requirements, while avoiding the difficulties that could be produced if fees and bonuses were factored in. It also calls for similar computations to those for other annual percentage yields, which will ease the ability of consumers to understand and compare accounts

among institutions. The Board solicits comment on all three options with special consideration given to which of the three approaches will most effectively communicate to consumers the appropriate information on earnings for the statement period. The Board also solicits comment on whether the disclosure on the periodic statement should be identified as the "annual percentage yield earned" rather than the "annual percentage yield" to distinguish it from the yields stated in advertisements and opening account disclosures.

Paragraph (b)—Amount of Interest Paid

The proposed regulation requires the periodic statement to include a dollar figure for the amount of interest that has been paid during the statement period. The figure would not include accrued interest that has not been credited to the account during the period, since the consumer has no access to the funds.

The Board proposes that any cash bonuses paid to the consumer during the statement period not be included in the total interest figure, although comment is requested on this issue. Since the Board is not proposing to include any bonus in the annual percentage yield calculation, the Board believes including it in an interest figure on the periodic statement would be confusing to consumers. (It could be shown separately on the statement, of course, as additional information.) The Board solicits comment on whether the regulation should require use of the term "interest" for purposes of this disclosure.

Paragraph (c)—Fees Imposed

The periodic statement would include all fees of the type required to be disclosed under § 230.4(b)(5) that were imposed during the statement period. For example, a monthly maintenance fee, NSF charge, or stop payment fee would have to be disclosed. Fees not imposed in connection with the account, such as those for a cashier's check or lease of safe deposit box, could be included in the periodic statement as additional information, at the institution's option. The regulation would not require fees imposed in connection with a credit account to be disclosed—for example, a fee imposed for accessing an overdraft feature on a checking account—since they are related to a credit feature and currently required to be disclosed under Regulation Z.

Section 268(3) of the act requires disclosure of the "amount of any fees or charges imposed," without specifying whether the fees should be totaled or itemized. The Board considered different methods for disclosing fees. The regulation could require: (1) A single figure showing the total amount of fees; (2) an itemization of fees (perhaps also requiring the date the fee was imposed); (3) both an itemization and a total of fees; or (4) at the institution's option, an itemization, a total, or a combination of these approaches.

The Board believes requiring all institutions to provide an itemization of fees by type is the most desirable approach, and that is reflected in the proposal. A listing of all fees would enable consumers to see the types and amount of fees imposed during the cycle. The Board proposes to permit fees of the same type to be grouped together. For example, all ATM charges imposed during the cycle or all per-check fees could be stated as a single figure, or shown separately.

Comment is requested on whether the regulation should also require the periodic statement to include a total fees figure or even a net earnings figure—that is, the total interest earned less any fees imposed. The latter might be desirable, especially since the Board is recommending that the annual percentage yield calculation not factor in fees.

Paragraph (d)—Number of Days in Period

The proposal tracks the statutory language in requiring that the total number of days in the statement period be given on the periodic statement. The Board requests comment on whether providing the beginning and ending dates for the period would provide adequate information to consumers (assuming it is clearly stated whether or not both of these days are included as part of the period).

Section 230.7—Payment of Interest

Paragraph (a)—Permissible Methods

Section 230.7(a) implements section 267(a) of the statute. The statute provides that interest on interest-bearing accounts shall be calculated by institutions "on the *full amount of principal in the account for each day* of the stated calculation period" at the rate disclosed (emphasis added). Although a literal reading of this language might appear to require institutions to calculate interest by using a daily balance calculation method (also known as the day-in-day-out method or day-of-deposit-to-day-of-withdrawal method), the legislative history confirms that the Congress considered the average daily balance method an acceptable alternative to the daily balance method. The Board proposes to allow both methods.

The legislative history states that the provision is intended to prohibit institutions from using certain other balance computation methods, such as the "low balance" or "investable balance" method of computing interest. The investable balance method of paying a disclosed rate on only 88% of the funds deposited by the consumer, for example, was clearly one target of the legislation. The low balance method pays a disclosed rate only on the lowest amount of principal in the account on any day in the period. The Committee report accompanying H.R. 2654 (the bill passed by the House in 1991, which contains language identical to that in the law as enacted) discusses the provision as follows:

> Thus, institutions would not be permitted to calculate interest on the "investable balance" or other balances that are less than the full amount deposited * * *. [It is] Congressional intent to prohibit calculation methods such as the low balance, FIFO and LIFO (First In First Out and Last in First Out) that do not meet the criteria stipulated in [this] section * * * . It is the Committee's intent that [this] section * * * be construed broadly to prohibit the use of any other methods that do not pay the same amount of interest, based on the full amount of principal in the account each day, as do either the average daily balance or daily balance methods.

Average daily balance method.

Since the Statutory language itself is ambiguous with regard to use of the average daily balance method, the Board solicits comment on whether institutions should be permitted to use this method.

Evidence indicates that a substantial number of banks use either the daily balance or the average daily balance method to calculate interest. While most banks use the daily balance method, between 8% and 36% (depending on the type of account) use the average daily balance method. One survey found that for NOW accounts, 91% to 95% of all banks use either a daily balance or average daily balance method. For money market accounts, 88% to 93% use one of these methods, and for savings accounts, 90% to 99%.[3]

The Board believes permitting institutions to use either the daily balance method or the average daily balance is consistent with the purpose of the legislation which requires that consumers be paid interest on the full amount of principal in the account each day. It also comports with the

[3] Retail Banking Report, 1990–1991, American Bankers Association, p. 49.

Committee report accompanying H.R. 2654 as quoted above. In addition, the statute requires disclosure of the balance computation method, which would be unnecessary if only one method were allowed.

Both methods require institutions to compute interest by applying a periodic rate to the full amount of principal in the account each day.[4] In the daily balance method the institution applies a periodic rate to the exact daily balance. In the average daily balance method the institution adds the full amount of principal in the account each day of the period or cycle, divides that figure by the number of days in the period or cycle, and applies a periodic rate to the result. Assuming the same compounding and crediting frequency, the interest calculated under either method would be identical in an account with little or no account activity in the period. In most cases, even where there is significant account activity, both methods will produce the same or substantially the same amount of interest. In some instances the daily balance method produces a slightly higher return, and in other situations the average daily balance method produces a slightly higher return. In all cases, under the proposed annual percentage yield calculation for the periodic statement, any differences in these methods would be captured by that figure.

Tiered rate accounts. There is one circumstance in which the daily balance and average daily balance methods can produce more significant differences in interest: tiered rate accounts. To illustrate this point, assume daily compounding occurs for the following account:

Simple interest rate (percent)	Deposit balance to earn rate (with the rate paid on the full balance)
5.00	$.01-<$5,000.
6.00	$5,000 and higher.

The two methods can produce differences in interest, depending on account activity—in particular, depending on whether the average daily balance falls above or below the break point, in this case, $5,000.

For purposes of illustration, assume the principal balance in the account for January and February is $5,000 for the first 20 days of each month and $4,000 for the remaining days of the month. (interest remains on deposit until the end of each month.) The daily balance method produced $22.52 in January and $20.86 in February. The average daily balance method produces $19.77 in January and $18.12 in February. In this example the daily balance method generates more interest ($2.75 and $2.74 per month) because the average daily balance falls below the break point of $5,000. As a second illustration, assume the balance in the account for each month is $4,500 for the first 20 days of the month and $6,500 for the remaining days of the month. In this example the average daily balance method generates more interest ($2.49 and $2.48 per month) because the average daily balance falls above the break point.

As these examples illustrate, in some instances for tiered rate accounts, the daily balance method produces a higher return, and in other situations the average daily balance method produces a higher return.

In spite of these differences, the Board believes institutions should be permitted to use either the daily balance or the average daily balance method. First, in many cases the two methods produce the same or a substantially similar return. Second, where the results differ, neither one consistently produces a higher return. Third, under the proposed APY calculation for the periodic statement, any differences in these methods would be captured by that figure. Fourth, institutions will disclose the method they use under § 230.4(b) so that consumers who prefer one method over the other have the necessary information on which to base their choices. Fifth, the legislative history accompanying the legislation contemplates the use of either method. Finally, requiring institutions to use a daily balance method could impose significant costs on some institutions that would have to change from the average daily balance method without any real benefit to consumers.

Minimum balance and tiered balance requirements. In addition to prohibiting use of the low balance method of balance calculation, the Board believes section 267(a) prohibits use of a "low balance" type of method to determine if a consumer has met a minimum balance requirement to earn interest.[5] Institutions are permitted under the law to set minimum balance requirements that must be met for the consumer to earn interest, or to earn a specified rate for tiered balance accounts. For example, an institution may choose to pay a 5.00% simple interest rate on an account only for those days a minimum balance of $500 is maintained. The Board believes that statute further permits an institution to provide that it will not pay interest on the account for those days the balance drops below the required minimum balance.

The Board does not believe, however, that the statute permits an institution to provide that the consumer does not earn any interest for a given period unless the consumer maintains a minimum balance for the entire period. For example, under the proposal an institution may not provide that a consumer will earn a 5.00% simple interest rate only if the consumer maintains a minimum balance of $500 for each day of a specified period or cycle. Such a practice, in effect, uses a low balance computation method to calculate whether interest is earned on an account. Permitting such a practice would enable an institution to refuse to pay intrest even if—under the example above—a consumer maintained a $10,000 balance for 29 days in a cycle, but permitted the balance to drop below $500 for one day in the same cycle.

Similarly, the Board does not believe institutions would be permitted to refuse to pay interest on a portion of a balance once a consumer has met any required minimum balance. If an institution sets its minimum balance requirement to earn interest, for example, at $300 and a consumer deposits $500, the institution must pay the stated simple interest rate on the full $500, and could not pay interest only on $200 of that deposit. The Board believes that this would be contrary to the statutory requirement and the intent of the Congress to require payment of interest at the disclosed rate on the full amount of principal in the account each day.

A related issue arises with regard to tiered rate accounts and calculation of the balance on which interest is paid. For example, assume an institution pays and discloses a 5.00% simple interest rate on deposit balances below $5,000, and a 6.00% simple interest rate on balances of $5,000 and above. The Board believes the statute would *not* permit an institution to pay the $5.00% rate for the entire cycle if the balance dropped below $5,000 for a few days during the cycle. For example, assume a consumer

[4] Since the act and regulation require interest to be paid each day funds remain on deposit, the rate the Board proposes to permit institutions to apply is a daily rate of 1/365 of the simple interest rate for 365 days (or, at the institution's option, 1/366 of the simple interest rate for 366 days during a leap year). The Board also proposes to permit institutions to apply 1/365 of the simple interest rate for 365 days in a leap year, but requests comment on this proposal.

[5] The discussion of this provision addresses only the payment of interest as it relates to the minimum balance requirement. For discussion of the assessment of fees and minimum balance requirements, see the supplemental information accompanying § 230.4(b)(4)(A).

maintained a $10,000 balance for 29 days in a cycle, but permitted the balance to drop to $4,999 for two days. The Board does not believe the statute would permit the institution to pay only 5.00% on $10,000 for 29 days, since the full amount of principal in the account for 29 days was actually $10,000 and should earn the stated 6.00% rate. The Board solicits comment on all of these issues.

Minimum balance requirements and balance computation provisions. Comment is also requested on related technical points. For example, should institutions be required to use a daily balance method to determine whether a minimum balance requirement to earn interest has been met, or may an average daily balance method be used instead (given that both methods are proposed to be allowed for purposes of calculating interest)? May institutions use both a minimum balance and an average daily balance measurement in determining whether a consumer has met the minimum balance requirement to earn interest? For example, should an institution be permitted to apply both a $500 daily balance and a $700 average daily balance requirement to determine whether interest is paid on an account for a particular day? Should institutions be permitted to calculate interest using one method and establish the minimum balance by use of a different method? For example, should an institution be permitted to use the daily balance method to compute interest but require a consumer to meet a minimum balance by averaging a month's daily balances? In commenting on these provisions, commenters should address the specific advantages and disadvantages to consumers and institutions for all of these issues.

Paragraph (b)—Compounding and Crediting Policies

Section 230.7(b) of the proposed regulation implements section 267(b) of the statute. It provides that § 230.7(a) does not mandate the frequency of any compounding. Thus institutions may compound bi-annually, annually, quarterly, monthly, daily, continuously, or on any other basis. The compounding frequency is required to be disclosed under proposed § 230.4(b)(3) and is factored into the computation of the annual percentage yield. (See the discussion of the annual percentage yield in the supplemental information accompanying appendix A.)

Section 230.7 also does not mandate a specific crediting policy. Thus institutions could credit interest earned on the account on an annual, semi-annual, quarterly, monthly, or other basis. The institution's crediting policy must be disclosed under § 230.4(b)(3). An institution may credit or post interest to the account at any frequency, thus establishing the intervals at which the consumer can withdraw such interest. Establishing crediting policies, however, does not permit an institution to treat accrued but uncredited interest as unearned. Because the statute and proposed regulation require that interest accrue based on the full balance in the account each day, the consumer's underlying right to such interest cannot be altered. Thus, the institution may not refuse to pay interest that has accrued, even if the consumer withdraws some of the principal in the account prior to the time the interest would be credited. This, of course, does not require an institution to pay interest for those days the consumer fails to meet a minimum balance requirement. Nor does this provision require the institution to permit the consumer to withdraw interest that is earned but not yet credited. If the consumer withdraws funds or closes an account before interest is credited, the institution may delay payment of the accrued interest until the crediting date. Finally, for time deposit accounts, institutions may assess a penalty for early withdrawal, as discussed in the supplemental information accompanying § 230.4(b)(7).

Paragraph (c)—Date Interest Begins to Accrue.

Section 267(c) of the statute requires that institutions must begin to accrue interest for all accounts no later than the business day specified in section 606 of the Expedited Funds Availability Act (EFAA) (12 U.S.C. 4005), subject to subsection 606 (a) and (b). Thus, the Truth in Savings Act provides that the accrual of interest rules in the EFAA apply to nontransaction accounts, such as certificates of deposit, as well as to transaction accounts covered by the EFAA. The EFAA and the Board's implementing Regulation CC generally require an institution to begin accruing interest when the institution receives "provisional" credit. The Board believes a consistent rule is essential for determining the principal balance on which interest accrues. The Board proposes to permit institutions to use the methods set forth in Regulation CC for determining the principal balance. If an institution accrues interest on funds represented by a deposited check that is later returned due to insufficient funds on deposit, or for another reason, the institution would not be required to pay interest for the time period the check was outstanding.

While the EFAA establishes the time institutions must *begin* to accrue interest, because of the general rule in section 267(a) of the Truth in Savings Act that interest must be computed on the full amount of principal in the account for each day, the Board believes institutions must accrue interest on funds up to the date of withdrawal from the account. Thus, if a check written by the consumer on an account is debited from the account by the account-holding institution on a Wednesday, the institution must accrue interest on those funds on deposit through Tuesday. (Because the check is debited on Wednesday, the balance in the account that day has been reduced. Thus, the Board believes the institution need not pay interest for Wednesday.)

Section 230.8—Advertising

This section of the proposal incorporates the advertising provisions of section 263 of the act. While the act's disclosure rules apply to accounts of all depository institutions, section 263(a) of the act's advertising provisions are phrased in terms of accounts offered by insured depository institutions. (Section 263 (b) and (c) of the advertising provisions, however, are not limited to insured depository institutions.) The Board's proposal would apply all of the advertising provisions to all depository institutions, whether insured or not. The Board believes that the act's purposes are furthered if all deposit account advertisements provide uniform disclosures to compare accounts, and does not believe it desirable for only some advertising rules to apply to uninsured depository institutions.

The Board requests comment on whether certain provisions from the Board's Regulation Q (as noted below) should be included in this regulation, and removed from Regulation Q.

Paragraph (a)—Misleading or Inaccurate Advertisements

The statute and regulation prohibit institutions from making misleading or inaccurate advertisements. Since section 271 of the act extends the possibility of civil liability to advertising violations, the Board is interested in construing the term "misleading" appropriately. The Board solicits comment on whether examples of what constitute "misleading or inaccurate statements" in advertising beyond the two in the regulation should be provided in the supplementary information accompanying the publication of the Board's final rule. The Board also request commenters to provide specific examples.

Use of the term "profit". The Board also requests comment on whether institutions should be permitted to refer to interest paid on an account as "profit," or if the use of the term in advertisements could mislead customers. The Board's Regulation Q (12 CFR 217.6(f)) and the advertising rules for deposit accounts of the other federal regulatory agencies have for years prohibited use of that term in deposit account advertisements on the grounds that the term implies a return on an investment, something typically associated with nondeposit accounts.

Advertising "free" accounts. Section 263(c) of the act prohibits an institution from advertising an account as a free or no-cost account if: (1) A regular service or transaction fee may be imposed; (2) a fee may be imposed if any minimum balance requirement is not met; or (3) a fee is imposed if the consumer exceeds a specified number of transactions. The proposed regulation captures these rules, but provides a different organizational approach. Institutions would not be permitted to describe any account as "free" or "no-cost" (or words of similar meaning) if any "maintenance or activity" fee might be imposed on the account. A maintenance or activity fee includes, for example, periodic service charges; per check fees; fees imposed to deposit, withdraw or transfer funds; and fees to receive copies of checks written on the account. It also includes fees imposed if a minimum balance requirement is not met or if a transaction limit is exceeded. A maintenance or activity fee would not include fees such as stop payment fees or fees for returned checks, or fees unrelated to the account such as a fee for purchasing a cashier's check or traveller's checks.

Potential loss of principal. The Board proposes one additional disclosure beyond those in the statute, for advertisments for deposits that involve the risk of loss of principal, such as those denominated in a foreign currency (as discussed in § 230.2 in the definition of "account"). To ensure that consumers are not misled about such accounts, the Board believes any advertisement should state that fluctuations in the exchange rate of foreign currencies could result in a loss of principal. The Board requests comment on whether institutions also should state that any such loss is not covered by deposit insurance. As with all advertisements, institutions would be prohibited from stating any rate or yield figure in advertisements unless it is stated as an annual percentage yield. Furthermore, the annual percentage yield stated would not factor in any value derived from currency fluctuations. A figure that reflected fluctuations in exchange rates would factor in information fundamentally different from that used for other deposit account offerings, and could lead consumers to be confused about the yield when comparing accounts. The Board solicits comment on whether institutions should be permitted to provide an example to illustrate potential returns on such a product based on currency fluctuations. If such an example were permitted, the Board believes all institutions should use a standardized length of time in calculating such a return. The Board requests comment on what amount of time should be used, and whether more than one example should be provided to show both a short-term and a longer-term effect of currency fluctuations on such an account.

Paragraph (b)—Permissible Rates

Section 263(a) of the act provides that a reference to a specific interest rate, yield, or rate of earnings in an advertisement triggers a duty to state certain additional information, including the annual percentage yield. The proposed regulation requires that if any rate or yield is stated it must be the "annual percentage yield," using that term. The Board requests comment on whether institutions should be permitted to use the abbreviation "APY" in advertisements, given the space and time constraints typically involved in advertisements.

Except for the simple interest rate, as explained below, no other rate or yield (such as an "average" or "aggregate" percentage yield) could be included in an advertisement. The Board believes that allowing institutions to state rates or yields in addition to the annual percentage yield would conflict with the act's stated purpose of providing uniform disclosures to enable consumers to compare accounts. Also, the Board is concerned that permitting other rates to be stated in addition to the annual percentage yield would result in advertisements with a confusing array of terms and numbers.

The Board believes, however, that the act permits the simple interest rate to the stated in advertisements in addition to the annual percentage yield. Thus, the Board's proposal allows the simple interest rate, using that term, to appear in conjunction with (but not more conspicuously than) the annual percentage yield. (The standard of allowing simple interest rates but limiting their prominence is one that is in Regulation Z.) The proposed regulation would not permit institutions to refer to the simple interest rate as the "annual percentage rate" in advertisements. (See the discussion of this issue in the supplementary information accompanying § 230.2(k).)

Paragraph (c)—Advertisement of Terms That Require Additonal Disclosures

Section 263(a) of the act requires additional information to be provided in deposit account advertisements if the advertisement refers to a specific rate of interest, yield, or rate of earnings. The act also imposes special format rules in certain cases to ensure that a consumer's attention is drawn to terms such as any differences in the annual percentage yield if a minimum balance is not met. The proposal generally follows the act's approach for the format and content of advertisements, but simplifies the order of the information provided.

The proposed regulation provides that a reference to an annual percentage yield "triggers" advertising disclosures. Since other rates are not permitted (except for the simple interest rate, which in turn requires a statement of the annual percentage yield), the regulation does not include any other "rate triggers." (See, however, the discussion of bonuses in § 230.8(d).)

There is no requirement that deposit account advertisements state an annual percentage yield figure. Stating other information in advertisements—such as "one, three, and five year CDs available" or "high rates available"—does not trigger the duty to state other terms of the account. The Board requests comment on whether a reference to a rate such as "we pay the rate available for 90-day U.S. Treasury bills" is so closely akin to stating a specific rate that the advertising disclosures should be triggered.

Special rules apply to tiered rate accounts: if an institution states an annual percentage yield in an advertisement, it would have to state all of the annual percentage yields, including those required to be shown as a range, as well as the corresponding minimum balance requirements. (See appendix A for annual percentage yield calculations for tiered rate accounts.) For example, assume an institution pays a stated simple interest rate only on that portion of the balance within the following specified balance levels (that is, Tiering Method B described in appendix A), and compounds interest daily:

Simple interest rate (percent)	Deposit balance required to earn rate
5.25	$.01- <$2,500.
5.50	$2,500- <$15,000.
5.75	$15,000-$100,000

Computing the figures in accordance with appendix A, the institution would have to state the following annual percentage yields:

Annual percentage yield	Balance required
5.39	$.01- <$2,500.
5.39-5.61	$2,500- <$15,000.
5.61-5.87	$15,000-$100,000.

If a trigger term is stated, the advertisement must provide the disclosures listed in paragraph (c) in a clear and conspicuous manner.

Paragraph (c)(1)

The regulation would require institutions that advertise variable rate accounts to state that the rate may change after the account is opened. Although the act does not expressly require the statement, section 265(2) authorizes the Board to prescribe modifications for advertising rules relating to the annual percentage yield on variable rate accounts. The Board believes that a brief statement alerting the consumer to possible changes in the annual percentage yield is necessary in advertisements.

Paragraph (c)(2)

The act and proposed regulation require that advertisements that state the annual percentage yield also state the period during which accounts with that annual percentage yield will be offered. For example, if an institution only guarantees its rates for a week, its advertisement might state "this annual percentage yield is available from June 1 through June 8."

Paragraph (c)(5)

This paragraph implements section 263(a)(3) of the act. It requires that advertisements state any time requirement necessary to earn the advertised yield. The Board proposes to limit this provision to time deposits. If an institution advertises a one-year certificate of deposit, it would state that time period. It also requires advertisements to state any lower annual percentage yield that will be earned if funds are withdrawn prior to meeting the minimum time requirement.

The Board solicits comment on whether to incorporate the current rule contained in Regulation Q (12 CFR 217.6(d)) that addresses deposits with time requirements greater than one year. That rule requires that, if a time requirement is greater than one year, the advertisement must state that period in equal prominence to the annual percentage yield, along with any lower annual percentage yield that will apply if funds are withdrawn prior to maturity.

Paragraph (c)(6)

The act requires deposit account advertisements to contain a statement that "fees or other conditions" could reduce the "yield" on the account. The proposed regulation requires the statement but uses the term "earnings" rather than yield. The act does not mandate terminology, and the Board believes the term earnings more accurately conveys the impact of fees on the account, since in no event does the annual percentage yield take fees into account. The Board proposes to require this statement if an institution can impose any of the maintenance and activity fees discussed in § 230.8(a) (discussing "free" accounts). Thus, for example, the statement would appear on advertisements for interest-bearing transaction accounts that impose a monthly service charge or a fee if a minimum balance is not maintained.

The Board solicits comment on whether the phrase "or other conditions" should be retained as part of the notice. Are there account terms other than fees that should be communicated by this statement?

Paragraph (c)(7)

The Board proposes that advertisements for time deposits with stated maturities of less than one year include a statement that the disclosed annual percentage yield assumes all funds will be on deposit for a full year at the initial simple interest rate. The act does not expressly require such a statement, but section 265 of the act authorizes the Board to modify diclosure requirements relating to advertising annual percentage yields for accounts with an annual percentage yield guaranteed for less than a year. The Board believes the statement would be an important reminder to consumers that the annual percentage yield is calculated on a certain assumption (that is, that the funds remain on deposit for one year, at the initial advertised rate) which may not, in fact, occur. The Board requests comments on whether the statement should be required, and whether it should be limited to accounts with stated maturities, such as certificates of deposit. Should the statement also be required in advertisements for transaction accounts and savings accounts, for example, since actual account activity in such cases also may not correspond to the one-year assumption on which the annual percentage yield is based?

Paragraph (c)(8)

The act requires that advertisements include a statement that an interest penalty will be imposed for early withdrawal. The Board's Regulation Q and the deposit account advertising rules of the other federal financial regulatory agencies currently require a similar notice, but limit it to advertisements for time deposits. The act is not so limited. The Board requests comment on whether the statement should be required only for time deposits containing provisions for possible early withdrawal penalties (the position reflected in the proposed regulation), or whether it should be required in other cases. For example, some accounts offer bonuses that may be "reclaimed" if funds are withdrawn before an agreed upon date. Some non-time deposits assess a fee if a consumer closes the account within 30 days of account opening. The Board requests comment on whether a disclosure under § 230.8(c)(8) should be required in cases such as these.

The terminology of the proposed disclosure is similar to the act, but does not include the word "interest" (or "substantial," as is required by Regulation Q). The Board requests comments whether either term should be required in the statement.

Paragraph (d)—Bonuses

The proposed regulation treats bonuses as a trigger term. If a bonus is advertised, an explanation of the conditions that must be met for bonuses to be paid and when they will be paid also must be stated, along with the annual percentage yield and the items listed in paragraph (c) of this section. Although the act does not expressly require the bonus disclosures, the Board believes the additional information is consistent with the act's purpose to provide uniform disclosures to compare accounts, and requests comments on the proposal. The Board is concerned that consumers may be misled if full information is included in advertisements about interest earnings while bonus "earnings" are not explained.

Possible limited exemption for broadcast and other media. Section 263(b) of the act authorizes the Board, if it finds the disclosures to be unnecessarily burdensome, to exempt "broadcast and electronic media and outdoor advertising" from stating any

initial deposit requirement, or stating that fees or other conditions could reduce the return. The statute limits any relaxation of the advertising rules to these two disclosures. The Board solicits comment on whether such an exemption should be made and, if so, why these disclosures place an unnecessary burden on depository institutions. The Board also requests comment on the merits of an additional exemption for the statement for accounts with a maturity of less than one year that the annual percentage yield assumes that funds remain on deposit for a full year at the initial rate (a provision not in the statute).

Although the statute is quite specific in the categories of advertising that can qualify from a relaxation of requirements, there may be other comparable situations that perhaps should be treated similarly. For example, should an exemption be considered for advertisements inside a depository institution, such as lobby boards, since consumers can obtain account disclosures during business hours?

Section 230.9—Enforcement and Record Retention

Paragraph (c)—Record Retention

The Board proposes to require institutions to retain records regarding their compliance with their responsibilities under the proposed regulation for a minimum of two years after disclosures are required to be made. Two years is the period commonly used under the Board's other consumer regulations (for example, Regulations Z and E). Furthermore, given the frequency of examinations by the enforcement agencies, a record retention requirement of this length should allow an institution's examiners adequate review of pertinent documentation during periodic examinations.

The Board contemplates that records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information. The institution need not retain disclosures in hard copy, as long as it retains enough information to reconstruct the required disclosures or other records.

Appendix A—Annual Percentage Yield Calculation

Appendix A establishes the rules that institutions would use to calculate the annual percentage yield. The proposed appendix contains two main parts: Part I discusses the calculations for advertisements and account disclosures, and Part II deals with periodic statement calculations. The Board is proposing only two annual percentage yield formulas in Part I: a "general" formula that can be used for all types of accounts and a "simple" formula that can be used for those accounts that have a maturity of one year, or that have an unstated maturity. The appendix provides several examples to illustrate how these formulas work. The appendix explains the general rules and describes how they should be applied in more complicated accounts, such as stepped rate and tiered rate accounts. If an account has two types of features, such as variable and tiered rates, all applicable rules would have to be followed. Part II contains a single formula for calculating the annual percentage yield of periodic statements, with no special rules for multiple rate accounts.

The appendix provides that the annual percentage yield shall reflect only interest, and may not include the value of any bonuses. Factoring in the value of a bonus would add significant complexity to the calculation of the annual percentage yield. For example, the value would have to be established as well as when the merchandise is provided to the consumer. If a cash bonus is given, assumptions would have to be made about whether the bonus is deposited and whether interest is accrued on the sum. The Board solicits comment on this proposal to exclude all bonuses from the calculation.

The proposed annual percentage yield calculation also excludes any amounts that are determined by circumstances that may or may not occur. For example, an institution may provide earnings to the consumer based on changes in certain stock market indicators (from the date an account is opened to the date it matures or is closed, for example) or on foreign currency fluctuations. The annual percentage yield for these and similar types of accounts would exclude such potential earnings. Similarly, if an institution chooses to pay .01% additional interest for each point scored in a future sporting event, that potential would not be reflected in the annual percentage yield. Such features would be disclosed as variable rate features under proposed § 230.4(b)(1)(ii). (To the extent the institution paid such interest on the account, the annual percentage yield on the periodic statement would capture this interest.)

The Board is proposing that institutions calculate the annual percentage yield by rounding the figure to the nearest one-hundredth of one percentage point, and showing it to two decimal places. Thus, if an institution calculated an anuual percentage yield to be 5.644%, that figure should be rounded down and shown as 5.64%; 5.645% would be rounded up and disclosed as 5.65%. The Board believes it is necessary to show annual percentage yields to two decimal places to enable consumers to adequately compare accounts.

The Board solicits comment on whether a tolerance for accuracy should be provided for calculating the annual percentage yield. The statute does not expressly provide a tolerance. The appendix includes a proposed tolerance of 1/20 of 1 percentage point (.05%). The Board is not proposing to use the same tolerance for the annual percentage rate found in Regulation Z (1/8 of one percentage point for regular transactions, or 1/4 of one percentage point for irregular transactions). First, the Truth in Lending Act itself provides for a 1/8 percent tolerance and authorizes the Board to designate a tolerance for more complex transactions. Second, the calculation of the annual percentage rate is more complicated than the calculation of the annual percentage yield, since the annual percentage rate factors in fees paid by the consumer (as well as interest), the frequency and amount of the consumer's payments, the timing of disbursements from the creditor to the consumer, and other factors. Such complexities are not present in the annual percentage yield calculation. The Board solicits comment on whether a tolerance is needed at all, and, if so, whether 1/20 of 1 percent would be an appropriate one.

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

A. General Rules

In general, the annual percentage yield reflects the relationship between the amount of interest to be earned by the consumer for the term of the account (including any compounding of interest) and the amount of principal assumed to have been deposited to earn that amount of interest. Institutions would be required to calculate the annual percentage yield based on the actual number of days in the term of the account. If an account has an unstated maturity, institutions would calculate the annual percentage yield based on an assumed term of 365 days.

For time deposits that are offered in multiples of months, the Board proposes to permit institutions to base the number of days on either the actual number of days during the applicable period, or the number that would occur for any actual sequence of that many calendar months. For example, if an institution offers a six-month certificate of deposit, the institution could calculate the annual percentage yield based on the number of days in a particular six-month period, or in any six-month period. The Board believes this will minimize the need of institutions to recalculate the annual percentage yield on an ongoing basis. The Board proposes, however, that institutions that choose to use this permissive rule would have to use the same number of days to calculate the interest figure used in the annual percentage yield formula (where "Interest" is divided by "Principal"). Thus , the institution with the six-month certificate of deposit above could base the annual percentage yield calculation on any number of days from 181 to 184, since various six-month periods could contain that range of days. If the institution chose to use 181 days as the "Days in Term," it must also use 181 days to compute the "Interest" figure used in the formula. An institution would not be permitted to use 181 as the "Days in Term" and use an "Interest" figure based on 183 days. (The amount of interest paid by the institution would have to be based on the actual number of days in the account due to the requirement to pay interest on the principal in the account each day. See § 230.7 of the regulation.)

D. Accounts With Tiered Rates (Different Rates Apply Depending on Balance Level)

Due to the nature of tiered rate accounts (in which the simple interest rate paid on the account is determined by reference to specified balance levels), the Board believes special rules are required to enable consumers to compare annual percentage yields for such accounts.

The appendix sets out the two basic methods of tiering used by institutions to calculate the interest they will pay on such accounts. In the first method (shown in the appendix as "Tiering Method A"), an institution pays the applicable "tiered" interest rate on the entire amount of the deposit. For accounts of this type, institutions must state the annual percentage yield that applies to each balance tier. In the example given in the appendix, this results in three separate annual percentage yields to be disclosed—one for each tier. Other than the fact that multiple annual percentage yields must be stated for these types of accounts, each annual percentage yield is calculated according to the general rule in the appendix.

In the second method of calculating interest on tiered rate accounts (shown in the appendix as "Tiering Method B"), institutions do not pay the applicable tiered intertest rate on the entire amount of the deposit, but only on the portion of the deposit balance that falls within each specified tier. For institutions that compute interest in this manner, a range of annual percentage yields must be provided for each tier, other than for the first tier—to accurately reflect how interest is paid. The low end of each range is figured on the highest balance in the tier. This approach requires an assumed balance for the highest tier in cases where the balance in the account is not limited. The appendix is written with an assumed high balance of $100,000. The Board solicits comment on what the high end of each range should be. Several alternatives exist: Using any limit established by the institution in its account agreement; permitting any amount to be used if a limit is not set forth in an agreement; or using $100,000, since that is the current amount for which accounts are federally insured.

Part III. Annual Percentage Yield for Periodic Statements

The annual percentage yield calculation for the periodic statement is similar to that used for advertising and opening account disclosures. The annual percentage yield is transaction specific for the periodic statement. It reflects the relationship of the interest actually paid and credited to the consumer's account during the period and the average daily balance in the account for the period. Thus, the annual percentage yield factors in the actual number of days in the statement period, as well as the actual interest and principal. It uses the same basic general formula as used in Part I, but reflects the actual interest earned and average daily balance during the period covered by the statement.

Appendix B—Model Clauses and Sample Forms

The model clauses and sample forms in appendix B are intended for optional use by financial institutions to aid compliance with the disclosure requirements of §§ 230.4 (account disclosures) and 230.5 (change in terms). Section 269(b) of the act provides that institutions that use these forms and clauses will be in compliance with the disclosure provisions of the act. In addition, use of any modified model form or clause will also be considered in compliance as long as the institution does not delete information required by the act of rearrange the format so as to affect the substance, clarity, or meaningful sequence of the forms and clauses.

As discussed in the supplemental information to § 230.3(a), the proposal provides for flexibility in designing the format of the disclosures. Institutions can either prepare a single document that contains disclosures for several accounts offered or prepare individual disclosures for each type of account.

The Board requests comment on what additional model forms and clauses should be included in appendix B. For example, a model form for periodic statemets was not included with the proposal since the disclosure requirements only duplicate of slightly augment the information currently provided. Comment is requested on whether such a model form is necessary.

1. B–1 Model Clauses

Clause (a)(ii) contains alternative language for disclosing how the annual percentage yield is determined in variable rate accounts. This reflects the alternative definitions of a variable rate account proposed in § 230.2(o).

Clause (a)(iv) contains alternative language for describing tiered rate accounts. As explained in appendix A, there are two types of tiered rate accounts. The first type pays the same higher rate on the entire balance in the account if the balance exceeds the cutoff figure. The second type of tiered rate account pays a lower simple interest rate on deposits up to a certain cutoff level, and a higher rate only on amounts above the cutoff level. An institution must provide the disclosure that describes its method of calculating interest.

Clauses (d)(i)—(iii) contain alternatives for disclosing any minimum balance requirements associated with the account. The regulation requires that the disclosures state any minimum balance that is required to open the account, avoid the imposition of fees or obtain the annual percentage yield disclosed. If a fee is incurred for not maintaining a minimum balance, it may be stated either with this disclosure or with other fees (of both).

Clause (f) contains a model format for use in disclosing fees. Institutions would be required to disclose either the amount of any fees that may be imposed in connection with the account or provide an explanation of how the fee will be determined. In addition, the disclosure must state the conditions under which the fee may be imposed if that is not clear from name and description of the fee. (See discussion of § 230.4(b)(5) regarding examples of fees that may be assessed in connection with the account.)

Clause (g) contains model language for disclosing transaction limitations. If a fee is imposed for exceeding the established limitation, it may either be stated with this disclosure or with other fees (or both).

Clauses (h) (early withdrawal penalty) and (i) (renewal policy) would be required osdnly for time deposits.

2. B–3 Sample Form

This sample illustrates the use of one general multi-purpose disclosure form for several accounts offered by an institution. The disclosures are for a money market account. Through the use of check marks, the disclosure clearly indicates which fees and terms apply to the money market account. A chart is included to illustrate one method of presenting information for multiple accounts. Institutions could either have the form preprinted (and marked accordingly) for each account listed, or have the information filled out at the time the account is opened. The fee shown in this sample (as well as in B–4) are based on average charges for particular services found in various national studies.

3. B–4 and B–5 Sample Forms

These samples illustrate individual disclosures for two different types of accounts (a certificate of deposit and a NOW account).

4. Samples B–6 and B–7

These samples illustrate the requirements for advertisements, fount in § 230.8 of the proposed regulation. Specifically, the samples demonstrate how a certificate of deposit and a money market account could be advertised in compliance with the regulation. The advertisement for the money market account shows how an institution that pays the simple interest rate on the entire deposit would state the annual percentage yields. (This method is discussed in appendix A as "Tiering Method A.") Since civil liability applies to violations of the advertising requirements, the Board is proposing to include sample forms for institutions for advertising. Comment is requested on whether sample advertisements should be included at all and, if so, whether the samples provided are useful.

Appendix C—Effect on State Laws

This appendix outlines the standards and process used for state law determinations.

Appendix D—Issuance of Staff Interpretations

The Board is proposing to use the same method of providing interpretations to the regulation as for Regulations B, E, and Z. An official staff commentary is expected to be issued in proposed form after the proposed regulation becomes effective in the spring of 1993. Such a proposal would be issued in final form after an opportunity for public comment, with an immediate effective date but with compliance not becoming mandatory for another six months—likely sometime inf 1994. Thereafter periodic updates of the official staff commentary would be contemplated.

The Board has established a pattern for updating several of its consumer regulation commentaries: publish changes for public

comment in the autumn, with final rules effective the following spring, but optional until the next October. The Board proposes to follow this pattern with its official staff commentary to this new regulation and solicits comment on whether this approach would be helpful. If the public felt that issuance of so many proposals at the same time would be difficult to deal with, the Board could adopt a different schedule for this regulation—for example, publishing the proposed interpretations for comment in the spring with final versions adopted in the fall.

Effective Date

Institutions will have to provide disclosures to any consumer who opens an account after the effective date of the regulations. Institutions also will have to provide disclosures for any time account renewed after the effective date, even if the account was an automatically-renewable one and had been opened prior to the effective date. Similarly, periodic statement disclosures and change in term notices would have to be provided, as applicable, to all accounts—including those opened prior to the effective date. Finally, the Board believes the substantive provision regarding the payment of interest will apply to existing accounts as of the effective date; it is not limited to new account holders.

(3) Form of Comment Letters

As discussed above, comment letters should refer to Docket No. R-0753. The Board requests that, when possible, comments be submitted using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review.

(4) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed regulation. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, or by telephone at (202) 452-3245.

(5) Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the proposed information collection will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of the comments received during the public comment period.

A detailed description of the proposed recordkeeping and disclosure requirements (including the reasons for them, the institutions that would be subject to them, and how frequently disclosure may be required) is contained elsewhere in this notice.

The information collection is mandatory (105 Stat 2236, 2334). The requirements will apply to both large and small institutions. The impact on small institutions will depend upon the extent of the disclosures and the options for compliance offered by the final regulations. Model disclosures forms in the regulation will somewhat ease compliance burdens on institutions. (The proposed model forms and clauses are set forth in appendix B.)

The following information about paperwork burden relates only to the effect of the proposal on state member banks. Institutions that will be subject to Regulation DD other than state member banks are supervised by other federal agencies: the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. For purposes of the Paperwork Reduction Act, these agencies will report their own estimates of the paperwork burden imposed by the Truth in Savings requirements.

The Board preliminarily estimates that the disclosure requirement will result in a one-time reporting burden of 206,000 hours and an annual reporting burden of 1,560,160 hours for state member banks.

Proposed Information Collection

Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation DD (Truth in Savings).

Report number: Not applicable.

OMB docket number: 7100-0255.

Frequency: As needed.

Reporters: State member banks.

	No. of records subject to requirement	×	Estimated time per response	=	Estimated total no. of hours of annual reporting burden
Notice to Existing Accountholders (one time burden)	8,240,000		1.5 min.		206,000
Complete Disclosures:					
Upon Request	907,000		3 min.		45,375
New Accounts	2,750,000		2 min.		91,667
Rollover CDs	800,000		1 min.		13,334
Notice for Non-Rollover CDs	267,000		1 min.		4,450
Change in Terms	1,100,000		1 min.		18,334
Periodic Statements	82,500,000		1 min.		1,375,000
Advertising	12,000		60 min.		12,000

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Deposit accounts, Interest, Interest rates, Federal reserve system, Truth in savings.

Pursuant to authority granted in section 269 of the Truth in Savings Act (Pub. L. No. 102-242) the Board proposes to amend 12 CFR chapter II as follows:

Part 230 would be added to read as follows:

PART 230—TRUTH IN SAVINGS

Authority: 12 U.S.C. 4301 et seq.

§ 230.1 Authority, purpose, coverage and effect on state laws.

(a) *Authority.* This regulation, known as Regulation DD, is issued by the Board of Governors of the Federal Reserve System to implement the Truth in Savings Act of 1991, contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. No. 102-242, 105 Stat. 2236) ("the act"). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB No. 7100-0255.

(b) *Purpose.* The purpose of this regulation is to enable consumers to make informed decisions about deposit accounts at depository institutions. The regulation requires depository institutions to provide disclosures of the terms and conditions on which interest is paid and fees are assessed against deposit accounts so that consumers can make meaningful comparisons among depository institutions.

(c) *Coverage.* This regulation applies to depository institutions except for credit unions. In addition, the advertising rules in § 230.8 apply to any

person who advertises a deposit account offered by a depository institution, including deposit brokers as defined in section 29(g)(1) of the Federal Deposit Insurance Corporation Act (12 U.S.C. 1831f).

(d) *Effect on state laws.* State law requirements that are inconsistent with the disclosure requirements of the act and this regulation are preempted to the extent of the inconsistency. Additional information on inconsistent state laws and the procedures for requesting a preemption determination from the Board are set forth in appendix C.

§ 230.2 Definitions.

For purposes of this regulation, the following definitions apply:

(a) *Account* means a deposit account held by or offered to a consumer by a depository institution. It includes accounts such as time deposits and demand, savings, and negotiable order of withdrawal accounts.

(b) *Advertisement* means a commercial message, appearing in any medium, that promotes directly or indirectly the availability of, or a deposit in, an account.

(c) *Annual percentage yield* means the total amount of interest paid on an account, based on the simple interest rate and the frequency of compounding for a 365-day period, expressed as a percentage, calculated according to the rules in appendix A.

(d) *Board* means the Board of Governors of the Federal Reserve System.

(e) *Bonus* means a premium, gift, award, or other consideration, whether in the form of cash, credit, merchandise, or any equivalent, given or offered to a consumer in exchange for opening, maintaining, or renewing an account of depositing funds in an existing account.

(f) *Business day* means a day on which the offices of a depository institution are open to the public for carrying on substantially all business functions.

(g) *Consumer* means a natural person (or unincorporated non-business association of persons) who holds an account primarily for personal, family, household, or other non-business purposes, or to whom such an account is offered.

(h) *Depository institution* and *institution* mean an institution defined in section 19(b)(1)(A)(i)–(vi) of the Federal Reserve Act (12 U.S.C. 461), except credit unions defined in section 19(b)(1)(A)(iv). The term includes state and federally chartered banks, state and federally chartered savings associations, and state and federally chartered savings banks and mutual savings banks.

(i) *Interest* means any payment to a consumer or to a consumer's account for the use of funds in an account. For purposes of this regulation, the term does not include the payment of a bonus, the waiver or reduction of a fee, or the absorption of expenses.

(j) *Periodic statement* means a statement setting forth account information that is provided to a consumer on a regular basis four or more times a year.

(k) *Simple interest rate* means the rate of interest paid without regard to compounding, shown as an annual figure and expressed as a percentage. For purposes of the account disclosures in § 230.4(b)(1)(i), the rate may be referred to as the "annual percentage rate" in addition to being referred to as the "simple interest rate."

(l) *State* means a state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(m) *Stepped rate account* means an account that has two or more simple interest rates that take effect in succeeding periods and are known when the account is opened.

(n) *Tiered rate account* means an account that has two or more simple interest rates that are determined by reference to a specified balance level.

(o) *Variable rate account* [Alternative one] means an account in which the simple interest rate may change after the account is opened, as long as that rate is determined by reference to an index.

[Alternative two] means an account in which the simple interest rate may change after the account is opened, except if the institution contracts to give at least 30 days advance written notice of rate changes.

§ 230.3 General disclosure requirements.

(a) *General.* Depository institutions shall make the disclosures required by § 230.4 through 230.6, as applicable, clearly and conspicuously in writing and in a form that the consumer may keep. Disclosures for each account offered by an institution may be presented separately or they may be combined with disclosures for the institution's other accounts, as long as the applicable information is clear. The disclosures shall reflect the legal obligation between the consumer and the depository institution.

(b) *Multiple consumers.* If an account is held by more than one consumer, disclosures may be made to any one of the consumers.

(c) *Oral responses to inquiries.* In an oral response to a consumer's inquiry about interest rates payable on its accounts, the depository institution shall state the "annual percentage yield," using that term. The "simple interest rate," using that term, also may be stated. No other rate may be stated.

§ 230.4 Account disclosures.

(a) *Delivery of account disclosures.*

(1) *Account opening.* The depository institution shall provide the account disclosures to the consumer before an account is opened or a service is provided, whichever is earlier. An institution is deemed to have provided a service when a fee required to be disclosed is assessed. If the consumer is not present at the institution when the account is opened or a service is provided and has not already received the disclosures, the institution shall mail or deliver the disclosures no later than ten business days after the account is opened or the service is provided, whichever is earlier.

(2) *Requests.* A depository institution shall provide the account disclosures to any consumer upon request. If the request is made in writing or by telephone, the institution shall mail or deliver the disclosures no later than three business days after it receives the request.

(3) *Renewals of time deposits*—

(i) *Disclosures required.* The renewal of a time deposit is a new account requiring account disclosures.

(ii) *Time deposits that renew automatically.* In the case of time deposits with a maturity of more than three months that automatically renew at maturity without a request from the consumer, the institution shall mail or deliver the account disclosures at least 30 days but not more than 60 days before maturity. For time deposits with a maturity of three months or less, the institution shall mail or deliver the account disclosures no later than ten business days after the account is renewed.

(iii) *Time deposits that renew by consumer request.* In the case of time deposits that renew only if requested by the consumer, if the consumer is not present at the institution when the request is made, the institution shall mail or deliver the account disclosures no later than ten business days after the account is renewed.

(b) *Content of account disclosures.* Account disclosures shall include the following:

(1) Rate information—(i) *Annual percentage yeild and simple interest rate.* The "annual percentage yield" and

the "simple interest rate," using those terms, and the period of time the simple interest rate will be in effect. In the case of stepped rate and tiered rate accounts, all annual percentage yields and simple interest rates must be included.

(ii) *Variable rates.* In the case of variable rate accounts:

(A) The fact that the simple interest rate and annual percentage yield may change;

(B) How the simple interest rate is determined;

(C) The frequency with which the simple interest rate may change; and

(D) Any limitation on the amount the simple interest rate may change.

(2) *Time requirements.* In the case of time deposits, any time requirement to obtain the annual percentage yield disclosed.

(3) *Compounding and crediting.* The frequency with which interest is compounded and credited.

(4) *Balance information.*

(i) *Minimum balance requirements.* Any minimum balance required to:

(A) Open the account;

(B) Avoid the imposition of fees; or

(C) Obtain the annual percentage yield disclosed.

Except for the balance to open the account, the disclosure shall include an explanation of how the balance is determined for these purposes.

(ii) *Balance computation method.* An explanation of the method (as permitted by section 230.7) used to determine the balance on which interest is paid.

(5) *Fees.* The amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed.

(6) *Transaction limitations.* Any limitations on the number or dollar amount of withdrawal or deposits.

(7) *Early withdrawal penalties.* In the case of time deposits, a statement that a penalty will be imposed for early withdrawal and the conditions under which such a penalty may be assessed. The annual percentage yield and simple interest rate that will apply if the time requirement is not met shall also be stated.

(8) *Renewal policies.* In the case of time deposits, a statement of whether or not the account will renew automatically at maturity. If the account will not renew automatically, an explanation of what will happen to the funds after maturity if the consumer does not renew the account shall also be stated.

(9) *Potential loss of principal.* In the case of an account that involves the risk of loss of principal, a statement of that fact.

(c) *Notice of existing account holders.* Depository institutions shall include a notice on or with the first periodic statement provided to existing account holders after March ____ 1993. The notice shall state that the account holder may request account disclosures containing terms, fees, and rate information for the account. Alternatively, institutions, may include the applicable account disclosures (as described in paragraph (b) of this section) instead of the notice with the periodic statement.

§ 230.5 Advance notice of change in terms and advance notice of maturity.

(a) *Change in terms.* A depository institution shall give advance notice to affected consumers of any change in a term required to be disclosed under § 230.4 if the change may reduce the annual percentage yield or adversely affect the consumer. The notice describing the change shall state the effective date of the change and shall be mailed or delivered at least 30 days before the effective date. The notice is not required for changes in the simple interest rate and corresponding changes in the annual percentage yield for variable rate accounts.

(b) *Notice of maturity for certain time deposits.* For time deposits with a maturity of more than three months that renew only if requested by the consumer, the depository institution shall give advance notice to consumers that the deposit is about to mature. The notice shall state the maturity date and describe what will happen to the funds after maturity if the consumer does not renew the time deposit. The notice shall be mailed or delivered at least 30 days but not more than 60 days before maturity.

§ 230.6 Periodic statement disclosures.

If a depository institution mails or delivers a periodic statement, the statement shall include the following disclosures:

(a) *Annual percentage yield earned.* The "annual percentage yield," using that term, earned during the statement period, calculated according to the rules in appendix A, Part II.

(b) *Amount of interest paid.* The dollar amount of interest paid during the statement period.

(c) *Fees imposed.* Fees required to be disclosed under § 230.4(b)(4) imposed during the statement period. The fees shall be itemized by type and disclosed as dollar amounts.

(d) *Number of days in period.* The total number of days in the statement period.

§ 230.7 Payment of Interest.

(a) *Permissible methods.* Depository institutions shall calculate interest on the full amount of principal in an account for each day by use of either the daily balance method or the average daily balance method.[1]

(b) *Compounding and crediting policies.* This section does not prohibit or require institutions to use any particular frequency of compounding or crediting of interest.

(c) *Date interest begins to accrue.* Interest shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act (12 U.S.C. 4005 *et seq.*).

§ 230.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement shall not be misleading or inaccurate and shall not misrepresent a depository institution's deposit contract. An advertisement shall not refer to or describe an account as "free" or "no cost" (or contain a similar term) if any maintenance or activity fee may be imposed on the account. In the case of an account that involves the risk of loss of principal, that fact shall be stated.

(b) *Permissible rates.* If an advertisement states a rate of return, it shall state the rate as an "annual percentage yield," using that term. The advertisement shall not state any other rate, except that a "simple interest rate," using that term, may be stated in conjunction with, but not more conspicuously than, the annual percentage yield.

(c) *Advertisement of terms that require additional disclosures.* If the annual percentage yield is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) For variable rate accounts, a statement that the rate may change after the account is opened.

(2) The period of time the annual percentage yield is in effect.

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[1] Under the daily balance method, interest is calculated by applying a periodic rate to the full amount of principal in the account each day. Under the average daily balance method, interest is calculated by applying a periodic rate to the average balance in the account for the period. The average balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

(3) The minimum balance required to earn the advertised annual percentage yield. For tiered rate accounts, the minimum balance requirement shall be stated for each tier and shall be stated in close proximity and with equal prominence to the applicable annual percentage yield.

(4) The minimum deposit required to open the account, if it is greater than the minimum balance necessary to earn the advertised annual percentage yield.

(5) The minimum time required to obtain the advertised annual percentage yield, together with any lower annual percentage yield that will apply if the deposit is withdrawn prior to that time.

(6) A statement that fees or other conditions could reduce the earnings on the account.

(7) In the case of time deposits with a stated maturity of less than one year, a statement that the annual percentage yield assumes that the funds will remain on deposit for a full year at the rate provided for in the deposit contract.

(8) In the case of time deposits, a statement that a penalty may be imposed for early withdrawal.

(d) *Bonuses.* If a bonus is stated in an advertisement, the advertisement shall state:

(1) The "annual percentage yield," using that term;

(2) The information in paragraph (c) of this section;

(3) The conditions that must be met in order to qualify for the bonus; and

(4) When the bonus will be paid.

§ 230.9 Enforcement and record retention.

(a) *Administrative enforcement.* A violation of the act or this regulation is subject to administrative sanctions as provided in section 270 of the act. Compliance is enforced by the agencies listed in that section.

(b) *Civil liability.* Section 271 of the act contains the provisions relating to civil liability for failure to comply with the requirements of the act and this regulation.

(c) *Record retention.* A depository institution shall retain evidence of compliance with this regulation for a minimum of two years after the date disclosures are required to be made. The administrative agencies responsible for enforcing the regulation may require depository institutions under their jurisdiction to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 270 of the act.

Appendix A—Annual Percentage Yield Calculation

The annual percentage yield (APY) is a measurement of the amount of interest an institution pays on an account, expressed as an annualized rate.[1] The annual percentage yield is based on a 365-day year.[2] Part I of this appendix discusses the annual percentage yield calculations for account disclosures and advertisements, while Part II discusses annual percentage yield calculations for periodic statements.

The annual percentage yield shall be calculated and expressed as a rate rounded to the nearest basis point (one-hundredth percentage point) and shown to two decimal places. The annual percentage yield shall be considered accurate if it is not more than five basis points (1/20 of one percentage point) above or below the annual percentage yield determined in accordance with the rules in this appendix.

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

In general, the annual percentage yield for account disclosures under §§ 230.4 and 230.5 and for advertising under § 230.8 is an annualized rate that reflects the relationship between the amount of interest that would be earned for a 365-day year and the amount of principal used to calculate that interest. Special rules apply to accounts with tiered interest rates.

A. General Rules

The annual percentage yield shall be calculated by the formula shown below, which reflects, on an annualized basis, the relationship between the amount of interest earned by the consumer for the term of the account and the amount of principal assumed to have been deposited to earn that amount of interest. Institutions shall calculate the annual percentage yield based on the actual number of days for the term of the account. For accounts without a stated maturity date (such as a typical savings or transaction account), the calculation shall be based on an assumed term of 365 days. In determining the total interest figure to be used in the formula, institutions shall assume that all principal and interest remain on deposit for the entire term, and that no other transactions (deposits *or* withdrawals) occur during the period.

The annual percentage yield is to be calculated by use of the following general formula:

$$APY=100[(1+\text{Interest}/\text{Principal})^{(365/\text{Days in term})}-1]$$

"Principal" is the amount of funds assumed to have been deposited at the beginning of the account.

"Interest" is the total dollar amount of interest earned on the Principal for the term of the account.

"Days in term" is the actual number of days in the term of the account.

When the "days in term" is 365 (that is, where the stated maturity is 365 days or where the account does not have a stated maturity), the APY can be calculated by use of the following simple formula:

$$APY=100\ (\text{Interest}/\text{Principal})$$

Examples: (1) If an institution would pay $61.68 in interest for a 365-day year on $1,000 deposited into a NOW account, the APY is 6.17%. Using the general formula above:

$$APY=100[(1+61.68/1{,}000)^{(365/365)}-1]$$
$$APY=6.17\%.$$

Or, using the simple formula above (since the term is deemed to be 365 days):

$$APY=100(61.68/1{,}000)$$
$$APY=6.17\%$$

(2) If an institution pays $30.37 in interest on a $1,000 six-month certificate of deposit (where the six-month period used by the institution contains 182 days), the APY is 6.18%. Using the general formula above:

$$APY=100[(1+30.37/1{,}000)^{(365/182)}-1]$$
$$APY=6.18\%$$

B. Stepped Rate Accounts (Different Rates Apply in Succeeding Periods)

For accounts with two or more fixed simple interest rates to be applied in succeeding periods (where the rates are known at the time the account is opened), an institution shall assume each simple interest rate is in effect for the length of time provided for in deposit contract.

Examples: (1) If an institution offers a $1,000 6-month certificate of deposit on which it pays a 5% simple interest rate, compounded daily, for the first three months (which contain 88 days), and a 5.5% simple interest rate, compounded daily, for the next three months (which contain 91 days), the total interest for six months is $26.10, and the APY is 5.39%. Using the general formula above:

$$APY=100\ [(1+26.10/1{,}000)^{(365/179)}-1]$$
$$APY=5.39\%$$

(2) If an institution offers a $1,000 2-year certificate of deposit on which it pays a 6% simple interest rate, compounded daily, for the first year, and a 6.5% simple interest rate, compounded daily, for the next year, the total interest for two years is $133.13, and the APY is 6.45%. Using the general formula above:

$$APY=100\ [(1+133.13/1{,}000)^{(365/730)}-1]$$
$$APY=6.45\%$$

C. Variable Rate Accounts

For variable rate accounts without an introductory premium or discounted rate, an institution must base the calculation only on the initial simple interest rate in effect when the account is opened (or advertised), and assume that this rate will not change during the year.

Variable rate accounts with an introductory premium or discount rate must be treated like stepped rate accounts. Thus, an institution shall assume that: (1) The introductory simple interest rate is in effect for the length of time provided for in the deposit contract; and (2) the variable simple interest rate that would have been in effect when the account is opened or advertised (but for the introductory rate) is in effect for the remainder of the 365-day year.

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[1] The annual percentage yield reflects only interest and does not include the value of any cash bonus, merchandise, or other items that may be provided to the consumer to open, maintain, increase or renew an account. Interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur.

[2] Institutions may calculate the annual percentage yield based on a 365-day or a 366-day year in a leap year.

For example, if an institution offers an account on which it pays a 7% simple interest rate, compounded daily, for the first three months (which contain 88 days), while the variable simple interest rate that would have been in effect when the account was opened was 5%, the total interest for a 365-day year for a $1,000 deposit is $56.35, and the APY is 5.64%. Using the simple formula:

APY=100 (56.35/1,000)
APY=5.64%

D. Accounts With Tiered Rates (Different Rates Apply Depending on Balance Level)

For accounts in which the simple interest rate paid on the account is determined by specified balance levels, the institution must calculate the annual percentage yield in accordance with the method described below that it uses to calculate interest. In all cases, an annual percentage yield (or a range of annual percentage yields, if appropriate) must be disclosed for each balance tier.

For purposes of the examples discussed below, assume the following:

Simple interest rate (percent)	Deposit balance required to earn rate
5.25	$.01 up to but not exceeding $2,500.
5.50	2,500 up to but not exceeding $15,000.
5.75	15,000 and higher.

Tiering Method A

Under this method, an institution pays on the full balance in the account the stated simple interest rate that corresponds to the applicable deposit tier. For example, if a consumer deposits $8,000, the institution pays the 5.50% simple interest rate on the entire $8,000.

When this method is used to determine interest, only one annual percentage yield will apply to each tier. Within each tier, the annual percentage yield will not vary with the amount of principal assume to have been deposited.

For the simple interest rates and deposit balances assumed above, the institution will state three annual percentage yields—one corresponding to each balance tier. Calculation of each annual percentage yield is similar for this type of account as for accounts with a single fixed interest rate. Thus, the calculation is based on the total amount of interest that would be received by the consumer for each tier of the account for a 365-day year and the principal assumed to have been deposited to earn that amount of interest.

First tier. Assuming daily compounding, the institution will pay $53.90 in interest on a $1,000 deposit. For the first tier, the APY is 5.39%. Using the general formula:

$\text{APY}=100\ [(1+53.90/1{,}000)^{(365/365)}-1]$
APY=5.39%

Using the simple formula:

APY=100 (53.90/1,000)
APY=5.39%

Second tier. The institution will pay $452.29 in interest on a $8,000 deposit. Thus, the annual percentage yield for the second tier is 5.65%. Using the simple formula:

APY=100 (452.29/8,000)
APY=5.65%

Third Tier. The institution will pay $1,183.61 in interest on a $20,000 deposit. Thus, the annual percentage yield for the third tier is 5.92%. Using the simple formula:

APY=100 (1,183.61/20,000)
APY=5.92%

Tiering Method B

Under this method, an institution pays the stated simple interest rate only on that portion of the balance within the specified tier. For example, if a consumer deposits $8,000, the institution pays 5.25% on only $2,499.99 and 5.50% on $5,500.01 (the amount that exceeds the cutoff level between the first and second tiers).

The institution that computes interest in this manner must provide a range that shows the lowest and the highest annual percentage yields for each tier (other than for the first tier, which, like the tiers in Method A, has the same annual percentage yield throughout). The low annual percentage yield is calculated based on the total amount of interest earned for a 365-day year assuming the *minimum* principal required to earn the simple interest rate for that tier. The high annual percentage yield is based on the amount of interest the institution would pay on the *highest* principal that could be deposited to earn that same simple interest rate. If the account does not have a limit on the amount that can be deposited, the highest principal for the top tier shall be deemed to be $100,000.

For the amounts assumed above, the institution would state a total of five annual percentage yields—one figure for the first tier and two figures stated as a range for the other two tiers.

First tier. Assuming daily compounding, the institution would pay $53.90 in interest on a $1,000 deposit. For this first tier, the annual percentage yield is 5.39%. Using the simple formula:

APY=100 (53.90/1,000)
APY=5.39%

Second tier. For the second tier the institution would pay between $134.75 and $841.45 in interest, based on assumed balances of $2,500 and $14,999.99, respectively. For $2,500, interest would be figured on $2,499.99 at 5.25% simple interest rate plus interest on $.01 at 5.50%. For the low end of the second tier, therefore, the annual percentage yield is 5.39%. Using the simple formula:

APY=100 (134.75/2,500)
APY=5.39%

For $14,999.99, interest is figured on $2,499.99 at 5.25% simple interest rate plus interest on $12,500 at 5.50% simple interest rate. For the high end of the second tier, the annual percentage yield is 5.61%. Using the simple formula:

APY=100 (841.45/14,999.99)
APY=5.61%

Thus, the annual percentage yield range that would be stated for the second tier is 5.39% to 5.61%.

Third tier. For the third tier, the institution would pay between $841.45 and $5,871.78 in interest, based on assumed balances of $15,000 and $100,000, respectively. For $15,000, interest would be figured on $2,499.99 at 5.25% simple interest rate, plus interest on $12,500 at 5.50% simple interest rate, plus interest on $.01 at 5.75% simple interest rate. For the low end of the third tier, therefore, the annual percentage yield is 5.61%. Using the simple formula:

APY=100 (841.45/15,000)
APY=5.61%

For $100,000, the assumed high end of the third tier, interest would be figured on $2,499.99 at 5.25% simple interest rate, plus interest on $12,500 at 5.50% simple interest rate, plus interest on $85,000.01 at 5.75% simple interest rate. For the high end of the third tier, therefore, the annual percentage yield is 5.87%. Using the simple formula:

APY=100 (5,871.78/100,000)
APY=5.87%

Thus, the annual percentage yield that would be stated for the third tier is 5.61% to 5.87%.

Part II. Annual Percentage Yield for Periodic Statements

The annual percentage yield for periodic statements under § 230.6 is an annualized rate that reflects the relationship between the amount of interest actually paid and credited to the consumer's account during the period and the average daily balance in the account for the period.

The annual percentage yield shall be calculated by using the following formula:

$\text{APY}=100\ [(1+\text{Interest earned/Balance})^{(365/\text{Days in period})}-1]$

"Balance" is the average daily balance in the account during the period covered by the statement.

"Interest earned" is the actual amount of interest accrued and credited to the account for the period covered by the statement.

"Days in period" is the actual number of days for the period covered by the statement.

For example, if an institution pays $5.25 in interest for a period containing 30 days, and the average daily balance for the period is $1,000, the APY is 6.58%. Using the formula above:

$\text{APY}=100\ [(1+5.25/1{,}000)^{365/30}-1]$

Appendix B—Model Clauses and Sample Forms

B-1—Model Clauses for Account Disclosures (Section 230.4(b))
B-2—Model Clause for Change in Terms (Section 230.5(a))
B-3—Sample Form (Multiple Accounts)
B-4—Sample Form (NOW account)
B-5—Sample Form (Certificate of Deposit)
B-6—Sample Form (Certificate of Deposit Advertisement)
B-7—Sample Form (Money Market Account Advertisement)

B-1—Model Clauses for Account Disclosures

(a) Rate Information

(i) *Fixed rate:* The simple interest rate for your account is ______% with an annual

percentage yield of _____%. You will be paid this rate [for _____] [until _____].

(ii) *Variable rate:* The simple interest rate for your account is _____% with an annual percentage yield of _____%. You will be paid this rate [for _____] [until _____].

Your simple interest rate and annual percentage yield may change.

Determination of Rate

The simple interest rate for your account is based on [*index*] [plus] [minus] a margin of _____.

We may change the simple interest rate for your account based on market or other factors.

Frequency of Rate Change

We may change the simple interest rate for your account [every _____] [at any time we choose].

Limitations on Rate Changes

The simple interest rate for your account will never change by more than _____% each _____.

The simple interest rate will never be [less] [more] than _____%.

(iii) *Stepped rate accounts:* The simple interst rate for your account is _____%. You will be paid this rate [until _____] [for _____]. After that time, the simple interest rate for your account will be _____%, and you will be paid this rate [until _____] [for _____]. The annual percentage yield for your account is _____%.

(iv) *Tiered rate accounts:* If your [daily balance] [average daily balance] is below $_____, the simple interest rate for your account will be _____% with an annual percentage yield of _____%.

If your [daily balance] [average daily balance] is $_____ or more, the simple interest rate paid on the entire balance in your account will be _____% with an annual percentage yield of _____%.

The simple interest rate that will be paid for only that portion of your [daily balance] [average daily balance] that exceeds $_____ is _____%. The annual percentage yield for the excess balance will range from _____% to _____%, depending on the balance in the account.

You will be paid these rates [for _____] [until _____].

(b) Time Requirements

To earn the annual percentage yield listed above, your entire deposit must remain on deposit [until _____].

(c) Compounding and Crediting

Interest will be compounded [on a _____ basis] [every _____].

Interest will be credited to your account [on a _____ basis] [every _____].

(d) Minimum Balance Requirements

(i) *To open the account.* You must deposit $_____ to open this account.

(ii) *To avoid imposition of fees.* A minimum balance fee [of $_____] will be imposed every _____ if your account does not have a [daily balance] [average daily balance] of at least $_____ for _____.

(iii) *To obtain the annual percentage yield disclosed.* You must maintain a minimum [daily balance] [average daily balance] of $_____ to earn the annual percentage yield listed above. you will earn interest for every day during the period that your account equals or exceeds the minimum balance requirement.

(e) Balance Computation Method

(i) *Daily balance method.* The balance on which interest is computed for your account is determined by the daily balance method, which applies a periodic rate to the full amount of principal in the account each day.

(ii) *Average daily balance method.* The balance on which interest is calculated for your account is determined by the average daily balance method, which applies a periodic rate to the average balance in the account of the period. The average daily balance is calculated by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

(f) Fees

The following fees may be assessed against your account:

_____	_____	$_____
_____	_____	$_____
_____	_____	$_____
_____	_____	(if $_____ _____)
_____	_____	%_____ of_____

(g) Transaction Limitations

You may only make _____ withdrawals from your account each statement cycle—_____ by check and _____ otherwise. The minimum withdrawal is $_____.

You may only make _____ deposits into your account each statement cycle.

You may only make _____ ATM [withdrawals from] [deposits into] your account each statement cycle.

You may only make _____ preauthorized transfers [from] [into] your account each statement cycle.

You may not make deposits into or withdrawals from this account until the maturity date.

(h) Early Withdrawal Penalty

We will impose a penalty if you withdraw [any] [all] of the depositied funds before the maturity date. The fee imposed will equal _____ months of interest.

A penalty of $_____ will be charge if you withdraw [any] [all] of the deposited funds before the maturity date.

If [any] [all] of the deposit is withdrawn before [the end of] that time, the simple interest rate paid on the remaining funds in your account will be _____% with an annual percentage yield of _____%.

(i) Renewal Policy

(i) *Automatically renewable.* This account will automatically renew at maturity.

(ii) Renewal upon notice from consumers. The account will not renew automatically at maturity. If you do not renew the acount, your deposit will be placed in a [_____ account for which interest will be paid based on the simple interest rate in effect at that time] [noninterest-bearing account].

(j) Potential Loss of Principal

Changes in the [*description of feature*] may result in a loss of principal.

B-2—Model Clauses for Changer in Terms

On _____, the cost of [*description and fee*] will increase to $_____.

On _____, the annual percentage yield for your account will decrease to _____%.

On _____, the minimum balance required to avoid imposition of a fee will increase to $_____.

B-3—Sample Form (Multiple Accounts)

Bank ABC—Disclosure of Interst and Charges

This disclosure contains information about your:

—Now Account
—Passbook Savings Account
X Money Market Account
—1 Year Certificate of Deposit (CD)
—2 Year Certificate of Deposit (CD)

Fees

The following fees and penalties may be assessed against your account:

X Fee per month for not maintaining a $500 minimum balance every day	$6.00
—Fee for every check you write on the account	.25
X Fee for each ATM withdrawal	.25
X Fee for each ATM deposit	1.00
X Fee for a stop payment order	12.50
X Fee for checks presented against insufficient funds	15.00
X Fee for each wire transfer (incoming or outgoing)	10.00
X Fee for writing more than 3 checks per month	6.00
X Fee for making more than 6 (total) withdrawals per month	8.00
—Fee for set up to gain access to computerized home banking	6.00
X Fee for check printing (200 checks) (depending on style selected)	12.00 to 18.00
X Fee per month for access to telephone bill payment plan	3.00
X Fee for assistance with reconciling bank statements (hourly rate)	17.00
X Fee for a photocopy of monthly statement or Form 1099	4.00
—Fee for making a transaction without an account passbook	1.75
—Penalty for early withdrawal (1 year CD)	50.00
—Penalty for early withdrawal (2 year CD)	100.00

Rate Information (Current Rates are Listed Below)

—Your simple interest rate and annual percentage yield are fixed.

X Your simple interest rate and annual percentage yield are fixed.

X Your simple interest rate and annual percentage yield may change. The simple interest rate for your account is based on the 6 Month Treasury bill plus a margin of .25%. This rate may change daily. The simple interest rate will never be less than 3%.

Minimum Balance To Avoid a Fee

X A fee will be imposed every month if your account does not have a minimum daily balance of $500 for each day of the month

Compounding and Crediting Policies

X Interest will be compounded on a daily basis

X Interest will be credited to your account on the last day of each month

—Interest will be credited to your account on the last day of each month and at maturity

Transaction Limitations

X You may only make 6 withdrawals from your account each month—3 by check and 3 otherwise. The minimum withdrawal is $100

—You may not make deposits or withdrawals from this account until the maturity date

Early Withdrawal Penalty

—A penalty will be charged if you withdraw any of the deposit before the maturity date

Renewal Policy

—The account will not renew automatically at maturity. If you do not renew the account, your deposit will be placed in a noninterest-bearing account

Time Requirements

—To earn the annual percentage yield listed above, your entire deposit must remain on deposit until [________]

Additional disclosures for your account are included in the attached chart.

ADDITIONAL DISCLOSURES ABOUT YOUR ACCOUNT

	Annual percentage yield (percent)	Simple interest rate (percent)	Period of time the simple interest rate is in effect	Minimum balance to open the account	Minimum daily balance to earn interest [1]	Method to determine balance on which interest is paid [1]
NOW Account	4.08	4.00	Rate may change daily	$100	$100	Daily balance method.
Passbook Savings Account	3.56	3.50	30 days from account opening.	$100	$100	Daily balance method.
Money Market Account	4.60	4.50	Rate may change daily	$100	$100	Daily balance method.
1 year Certificate of Deposit	5.34	5.20	Until maturity	$1,000	$1,000	Daily balance method.
2 year Certificate of Deposit	5.97	5.80	Until maturity	$1,000	1,000	Daily balance method.

[1] The balance on which interest is paid is determined by the daily balance method, which applies a periodic rate to the full amount of principal in the account each day.

B-4—Sample Form (NOW Account)

Bank XYZ—Disclosure of Interest and Charges NOW Account

Fees

The following fees and penalties may be assessed against your account:

Fee per month for keeping a $500 minimum balance	$6.00
Fee for every check you write on your account	.25
Fee for an ATM card (annual fee)	10.00
Fee for each ATM withdrawal	.25
Fee for each ATM depsoit	1.00
Fee for a stop payment order	12.50
Fee for checks presented against insufficient funds (NSF)	15.00
Fee for printing checks (per 200)	12.00 to 18.00
Fee to establish a preauthorized transfer	3.00
Fee for not providing taxpayer ID number	7.00
Fee for bank-by-mail kit	5.00
Fee to hold a periodic statement at branch	15.00

Rate Information

The simple interest rate for your account is 5.00% with an annual percentage yield of 5.13%. You will be paid this rate until 9-1-92.

Your simple interest rate and annual percentage yield may change.

We may change the simple interest rate for your account based on market or other factors at any time.

The simple interest rate will never be less than 3%.

Minimum Balance Requirement

You must deposit $100 to open this account.

A minimum balance fee will be imposed for every month your account does not have a average daily balance of $500.

You must maintain an average daily balance of $100 to earn the annual percentage yield listed above.

Balance Computation Method

The balance on which interest is paid for your account is determined by the average daily balance method, which applies a periodic rate to the average balance in the account for the period. The average daily balance is calculated by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

Compounding and Crediting

Interest for your acount will be compounded daily and credited to your account balance on the last day of each month.

B-5—Sample Form (Certificate of Deposit)

XYZ Savings Bank—Disclosure of Interest and Charges; 1 Year Certificate of Deposit

Rate Information

The simple interest rate for your account is 6.00% with an annual percentage yield of 6.18%. You will be paid this rate until the maturity date of the certificate.

Time Requirement

To earn the annual percentage yield listed above, your entire deposit must remain on deposit until June 28, 1993.

Minimum Balance Requirements

You must deposit $1,000 to open this account.

You must maintain a minimum daily balance of $1,000 to earn the annual percentage yield listed above.

Balance Computation Method

The balance on which interest is paid for your account is determined by the daily balance method, which applies a periodic rate to the full amount of principal in the account each day.

Transaction Limitations

You may not make deposits or withdrawals from this account until the maturity date.

Early Withdrawal Penalty

If you withdraw any funds before the maturity date, a penalty of $50 will be charged to your account.

Renewal Policy

This account will be automatically renewed at maturity. Even after it is renewed, you may withdraw the funds within 10 days without being charged a penalty.

Compounding and Crediting

Interest for your account will be compounded daily and credited to your account balance on the last day of each month and at maturity.

B-6—Sample Form (Certificate of Deposit Advertisement)

Bank XYZ—Always Offers You Competitive CD Rates

Account	Annual Percentage Yield
5 Year Certificate	6.31
4 Year Certificate	6.07
3 Year Certificate	5.72
2 Year Certificate	5.52
1 Year Certificate	4.54
6 Month Certificate *	4.34
90 Day Certificate *	4.21
The annual percentage yields are effective 3/9/92 through 3/16/92.	Funds must remain on deposit until maturity to earn the advertised yield.

*The annual percentage yield assumes funds will remain on deposit for a full year at the advertised rate. A penalty may be imposed for early withdrawal. The minimum daily balance to open the account and to earn interest is $1,000.

For more information call: 202-123-1234, Bank XYZ. Deposits insured to $100,000 by FDIC.

B-7—Sample Form (Money Market Account Advertisement)

The Prime Dollars In The Market Are In Money Market Accounts With Bank XYZ

	Annual percentage yield
Accounts with a balance of $5,000 or less.	5.07%*
Accounts with a balance over $5,000.	5.57%*
The annual percentage yields are available April 15 through April 20.	Fees or other conditions could reduce the earnings on the account.

*The rates may change after the account is opened.

For more information call: 202-123-1234, Bank XYZ; founded 1899. Deposits insured to $100,000 by FDIC.

Appendix C—Effect on State Laws

(a) Inconsistent Disclosure Requirements

State law requirements that are inconsistent with the disclosure requirements of the act and this regulation are preempted to the extent of the inconsistency. A state law is inconsistent if it requires a depository institution to make disclosures that contradict the requirements of the federal law. A state law is also contradictory if it requires the use of the same term to represent a different amount or a different meaning than the federal law, or if it requires the use of a term different from that required in the federal law to describe the same item.

(b) Preemption Determinations

A depository institution, state, or other interested party may request the Board to determine whether a state law requirement is inconsistent with the federal requirements. A request for a determination shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Notice that the Board intends to make a determination (either on request or on its own motion) will be published in the **Federal Register**, with an opportunity for public comment unless the Board finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision. Notice of a final determination will be published in the **Federal Register** and furnished to the party who made the request and to the appropriate state official.

(c) Effect of Preemption Determinations

After the Board determines that a state law is inconsistent, a depository institution may not make disclosures using the inconsistent term.

(d) Reversal of Determination

The Board reserves the right to reverse a determination for any reason bearing on the coverage or effect of state or federal law. Notice of reversal of a determination will be published in the **Federal Register** and a copy furnished to the appropriate state official.

Appendix D—Issuance of Staff Interpretations

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulation. These interpretations provide the protections afforded under section 271(f) of the act. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically. No staff interpretations will be issued approving depository institutions' forms, statements, or calculation tools or methods.

By order of the Board of Governors of the Federal Reserve System, April 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-8013 Filed 4-10-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TREASURY

Office of Thrift Supervision

12 CFR Parts 545 and 571

[Docket No. 92-136]

RIN 1550-AA48

Branch Offices, Exclusive Leases, and Similar Agreements

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing repeal of two regulations because they are unnecessary and obsolete. These regulations prohibit savings associations from entering into leases and other arrangements that would give an association the exclusive right to occupy the premises of a chain store or regional shopping center. The regulations were adopted by the OTS's predecessor agency, the Federal Home Loan Bank Board (Bank Board) because exclusive lease arrangements were considered a potentially unsafe or unsound practice for savings associations. However, the OTS believes these regulations are unnecessary because existing Federal and State laws addressing anti-competitive behavior are sufficient to address potential abuses that may arise in this area.

DATES: Comments must be received no later than May 13, 1992.

ADDRESSES: Comments should be submitted to: Director, Information Services Division, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Eileen M. McCarthy, Policy Analyst, Supervision Policy, (202) 906-5652, or Michael P. Vallely, Senior Attorney, Corporate and Securities Division, (202) 906-6241, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On July 15, 1972, the Bank Board adopted a rule currently at 12 CFR 545.92(i), to prohibit federal savings associations from entering into any agreement that would result in the exclusive right to operate a branch office in a regional shopping center or in a majority of all locations of a chain store, or that would exclude other financial institutions from operating offices in a regional shopping center or any location of a chain store where the association does not have an office.[1] On February 20, 1976, the Bank Board adopted another rule, currently at 12 CFR 571.11, expressing a policy of prohibiting any leasing or other arangements under which a savings association could prevent competing financial institutions from occupying office space in a regional shopping center.[2]

These two regulations were adopted by the Bank Board because it believed that these types of exclusive lease agreements were anti-competitive and would expose associations to substantial liability under the antitrust laws, with attendant risk to the deposit insurance fund. Like other restrictive covenants, exclusive lease provisions may involve unreasonable restraints of trade under section 1 of the Sherman Act, 15 U.S.C. 1, attempts to monopolize

[1] See 37 FR 13164 (July 4, 1972).

[2] See 41 FR 2805 (January 20, 1976.)

under section 2 of the Sherman Act, 15 U.S.C. 2, or unfair methods of competition under section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. However, the OTS is aware of no instances where a savings association's lease arrangements were successfully challenged as anti-competitive, or where a lease arrangement otherwise presented significant safety or soundness concerns. Moreover, current Federal and state antitrust laws establish a wide range of administrative and judicial sanctions against, and remedies for, anti-competitive lease arrangements. In addition, antitrust laws in most states parallel the Federal laws in both the scope of anti-competitive behavior that is prohibited and the forms of relief available to aggrieved parties.

The OTS therefore has concluded that these provisions are both unnecessary and obsolete and has determined that they should be repealed. Savings associations retain sufficient protection against the potential anti-competitive effects of exclusive leases and similar arrangements.

Solicitation of Comments

The OTS solicits comment on all aspects of this proposed regulation. To facilitate processing of comments, the OTS requests that any comments clearly reference the Resolution Number of this proposal. The OTS has determined that a thirty (30)-day public comment period is appropriate because prompt action is in the public interest.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 12291

The OTS has determined that this proposed rule does not constitute a "major rule" for purposes of Executive Order 12291 and, therefore, does not require the preparation of a regulatory impact analysis.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the OTS hereby proposes to amend part 545, subchapter C, and part 571, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 18, 64 Stat. 891, as amended by sec. 221, 103 Stat. 267 (12 U.S.C. 1828).

§ 545.92(i) [Removed]

2. Section 545.92(i) is removed

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 571—STATEMENTS OF POLICY

1. The authority citation for part 571 continues to read as follows:

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 571.11 [Removed]

2. Section 571.11 is removed.

Dated: March 27, 1992.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Deputy Director for Washington Operations.

[FR Doc. 92-7967 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-02-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 92-142]

RIN 1550-AA49

Regulatory Capital: Intangible Assets

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its risk-based capital regulation to set forth the types of intangible assets that savings associations may include in calculating capital for purposes of compliance with their tangible capital, leverage ratio, and risk-based capital requirements. This proposal also sets forth certain limitations and other requirements that would apply to qualifying intangible assets under the proposed rule.

Under this proposal, purchased mortgage servicing rights (PMSRs) and purchased credit card relationships (PCCRs) would be defined as "qualifying intangible assets," and therefore could be included in core capital. PMSRs and PCCRs in the aggregate could only be included in core capital up to 50 percent of core capital provided that PCCRs may not exceed a sublimit of 25 percent of core capital. PMSRs and PCCRs in excess of applicable limits, as well as core deposit intangibles (CDIs) and other types of nonqualifying intangibles, would be deducted from both assets and capital in calculating capital.

This proposal was developed in conjunction with the other federal banking agencies and is aimed at achieving greater consistency among the agencies in the treatment of intangible assets under their capital rules and guidelines. This proposal would also implement section 475 of the Federal Deposit Insurance Corporation Act of 1991 (FDICIA), which requires OTS and the other federal banking regulators to adopt limits on the amount of PMSRs that regulated institutions may include in capital.

The OTS is proposing to adopt this rule pursuant to the authority granted to the OTS by section 475 of FDICIA. This statutory provision rescinds the authority of the FDIC under section 5(t)(4) of the Home Owner's Loan Act (HOLA).

DATES: Comments must be received on or before May 13, 1992.

ADDRESSES: Send comments to Director, Information Services, Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Program Manager, Capital Policy, (202) 906-6465, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. Treatment of Intangible Assets by Federal Banking Agencies

The OTS is proposing to revise its risk-based capital regulation for savings associations to set forth the types of

intangible assets that may be included in (*i.e.*, not deducted from) core and tangible capital. This proposal also specifies the limits and discounts that would be applicable to such intangibles included in capital. The proposal is based on a tentative agreement on the treatment of intangible assets reached by the OTS, the Board of Governors of the Federal Reserve System (Federal Reserve), the FDIC, and the Office of the Comptroller of the Currency (the OCC).

The basic approach taken by the OTS and the other federal banking agencies in determining the treatment of identifiable intangible assets has been to evaluate them on the basis of criteria comparable to the following standards set forth in § 567(a)(2)(ii) of the *OTS* capital rule:

1. The intangible assets must be able to be separated and sold apart from the savings association or from the bulk of the association's assets;

2. The market value of the intangible asset must be established on an annual basis through an identifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the savings association; and

3. The savings association must demonstrate and document that a market exists that will provide liquidity for the intangible asset.

All of the federal banking agencies have determined that PMSRs generally meet these criteria and all allow such assets in core (Tier 1) capital, subject to certain limits. The agencies differ on the extent to which other intangibles meet the criteria and follow somewhat different procedures regarding their current capital treatment.

The existing OTS policy, which will be modified with the adoption of this rule, is that other identifiable intangible assets, specifically CDIs, could satisfy the three-part test. The OTS currently does not require the deduction of such qualifying intangible assets from capital.

All the agencies specify limits for the amount of intangibles that institutions can currently include in capital. Under the FDIC's PMSR rule as it previously applied to thrifts, thrifts could include PMSRs up to 50 percent of core capital and 100 percent of tangible capital. The OTS also permits CDIs and other qualifying intangibles to constitute up to an additional 25 percent of core capital.

The FDIC and the OTS also impose certain valuation requirements for determining the fair market value and book value of PMSRs. In addition, their capital rules state that for purposes of calculating regulatory capital the amount of PMSRs reported on the balance sheet will be reduced to the lesser of:

(i) 90 percent of fair market value; or

(ii) 90 percent of original purchase price; or

(iii) 100 percent of remaining unamortized book value.

The banking agencies have been reviewing the capital treatment of identifiable intangible assets with the aim of developing greater uniformity among the agencies in the treatment of these assets for capital adequacy purposes. On the basis of this review, the OTS is now proposing to issue for public comment revisions to its capital regulation to provide explicit guidance on the types of intangible assets that may be included in capital and specifications on the appropriate limits on such assets.

The OTS is also proposing to subject PMSRs to certain valuation requirements that are consistent with provisions of FDICIA and with the FDIC's PMSR rule as it applies to state nonmember banks and as it previously applied to savings associations. FDICIA requires that the value of readily marketable PMSRs included in the calculation of an association's capital not exceed 90 percent of fair market value and that such value be determined at least quarterly. The FDIC's PMSR rule contains criteria for determining both the fair market value and book value of these assets. These determinations are required to be made each quarter. Since the calculation fo the fair market value for PCCRs is at least as subjective as it is for PMSRs, the OTS and the other agencies are proposing that PCCRs be subject to the same valuation requirements as PMSRs.

B. Legal Background of Treatment of Thrifts' Intangible Assets

FIRREA was enacted into law on August 9, 1989. Section 301 of FIRREA added a new section 5(t) to the Home Owners' Loan Act ("HOLA"). This section provided that the FDIC "shall prescribe a maximum percentage of the tangible capital requirement that savings associations may satisfy by including purchased mortgage servicing rights in calculating such capital." Furthermore, the HOLA provides the amount of PMSRs that a thrift may count in capital in computing its leverage limit and risk-based capital requirement may not exceed the amount that could be included if the savings association were an insured nonmember bank.

FIRREA also mandated that OTS limit the inclusion of PMSRs in computing the tangible capital, leverage ratio, and risk-based capital requirements of savings associations to inclusion on terms "no less stringent" than those under the capital standards applicable to State nonmember banks and national banks. FIRREA gave the FDIC exclusive authority over the amount included in the capital of savings associations. FDICIA rescinds this FDIC authority.

FIRREA also required the OTS to define "core capital" at least as stringently as the Controller of the Currency (OCC) defines the term for national banks. Thus, the OTS is required to follow generally the same policy as the OCC regarding the determination of what intangible assets to count in core capital and the terms under which such assets are included.

II. Proposal

The OTS is proposing the following treatment for identifiable intangible assets for purposes of the tangible, core, and risk-based capital requirements:

1. PMSRs and PCCRs would be considered qualifying intangible assets. As such, they would not have to be deducted from capital provided that, in the aggregate, they do not exceed 50 percent of core capital and provided that PCCRs do not exceed a sublimit of 25 percent of core capital. PMSRs and PCCRs in excess of these limits would be deducted from assets and core capital in determining core capital.

To illustrate, assume that a savings association has total Tier 1 capital of $1,000,000. The association also has qualifying PCCRs of $300,000 and qualifying PMSRs of $200,000. For capital computation purposes, the association may include $250,000 of its PCCRs (25 percent of $1,000,000) and all $200,000 of its PMSRs (because the total of PMSRs and allowable PCCRs does not exceed 50 percent of core capital).

2. This proposal will allow associations to include the same amount of PMSRs in tangible capital that they include in core capital. Amounts required to be excluded from core capital must also be excluded from tangible capital. Under this approach, there will be no separate percentage limit for inclusion of PMSRs in thrifts' tangible capital. PCCRs, however, are only includable in associations' core capital, not tangible capital.

3. The limits on PMSRs and PCCRs would be based on a percentage of core capital before excess holdings of these assets are deducted, but after nonqualifying identifiable intangible assets are deducted.

4. Associations would be required to determine the fair market value and to review the book value of their PMSRs and PCCRs at least quarterly. Associations that wish to include these

assets in capital may not carry them at a book value that exceeds the discounted value of their future net income.

5. For purposes of calculating regulatory capital, the amount of PMSRs and PCCRs reported as balance sheet assets would be reduced to the lesser of 90 percent of their fair market value, 90 percent of their original purchase price, or 100 percent of their remaining unamortized book value.

6. CDIs and all other identifiable intangible assets would be deducted from capital in calculating core capital.

PMSRs and PCCRs as Qualifying Intangibles

The OTS believes that PMSRs and PCCRs generally meet the three-part test for intangibles described above that the OTS and the other agencies use to evaluate identifiable intangible assets. With regard to the two criteria that pertain to the marketability of intangible assets, the OTS believes that fairly active and liquid markets exist for PMSRs and PCCRs, and thus it is feasible to sell these assets should the need arise.

The third criterion under the three-part test, however, requires that there must be a high degree of certainty that the assets will hold their market value notwithstanding the future prospects of the savings association. The OTS believes that the market value of PMSRs and PCCRs, as with most other assets, are likely to change in value in response to changing market conditions and other factors. Nevertheless, the OTS believes that the strict valuation criteria contained in this proposed rule will provide ample safeguards against the possibility that these assets will be included in assets and capital at inflated values. As a result, the OTS believes that PMSRs and PCCRs valued in accordance with the requirements of this proposed rule would satisfy the intent of this criterion. Thus, the OTS believes that savings associations should be permitted to include these assets in capital, subject to the limitations and restrictions described in this proposal.

PMSR Transition

The OTS proposal would retain the February 9, 1990, grandfathering date in the FDIC's PMSR rule, 12 CFR 325.5. This date was established under the previous FDIC rule, which applied to both savings associations and state nonmember banks. The OTS is also proposing to retain discretion to allow, on a case-by-case basis, savings associations to phase-down their level of PMSRs as a percentage of capital at a rate acceptable to OTS. The OTS will have discretion to determine whether an association is decreasing its ratio of PMSRs-to-capital at an acceptable rate. Because mortgage servicing is a business that has relatively high fixed costs, its profitability is highly sensitive to achieving and maintaining a certain volume of servicing. The OTS also will use its discretion to avoid harmful effects on an association's operations that might result from an abrupt decline in servicing business caused by strict adherence to the PMSR limit.

CDI Grandfathering Provision

The OTS has in the past allowed certain CDIs to be included in assets and capital. The OTS took this action based upon its view that conservatively valued CDIs meet the three-part test in the OTS capital rule and have real economic value, and therefore do not warrant exclusion from capital. The OTS is concerned that the exclusion of CDIs from capital may impose an artificial regulatory barrier to sound mergers and acquisitions.

However, in light of the OTS's limited discretion under FIRREA and the OTS's desire to achieve a common interagency approach to the treatment of intangible assets, the OTS is proposing to adopt a uniform interagency approach under which CDIs do not constitute qualifying intangible assets. This proposed rule would require CDIs to be deducted from an association's assets and capital. OTS, however, is proposing to grandfather conservatively valued CDIs that result from transactions that are either in existence or under firm contract as of the effective date of this rule.

II. Relationship to Existing Policy

Consistent with the proposals of the other federal banking agencies, the OTS is proposing to adopt a percentage-of-capital limit, the valuation and discounting criteria, and the other requirements of this proposal. Most of these limitations and requirements were applicable to savings associations under the PMSR rule adopted by the FDIC in December 1990.[1] FIRREA made savings associations subject to the FDIC's rule. The FDIC's authority was rescinded by section 475 of FDICIA.

The present proposal, however, does have some significant differences from the FDIC's PMSR rule. First, this proposed rule would subject PCCRs, as well as PMSRs, to the 50 percent of core capital limit with a separate 25 percent of core capital sublimit for PCCRs. The current OTS capital rule authorizes qualifying intangibles (other than PMSRs) meeting the three-part test to comprise 25 percent of core capital in addition to the 50 percent of core capital consisting of PMSRs. This proposal, therefore, is more restrictive than the previously applicable FDIC rule because it would eliminate the authority to include this additional amount of qualifying intangible assets.

Second, the OTS is proposing to prohibit the discount rate used in conducting quarterly PMSR and PCCR valuations from being less than the discount rate used to determine the fair value of the asset at its original acquisiton. OTS is proposing this limitation to maintain consistency with the proposals of the other federal banking agencies.

The OTS, however, is proposing to require an annual independent market valuation, a provision retained from the FDIC's PMSR rule. The Federal Reserve Board and OCC are not proposing this requirement.

IV. Retention of the Limitations and Standards Under the PMSR Rule of the FDIC

Section 475 of FDICIA,[2] which was enacted into law on December 19, 1991 requires each federal banking agency to establish its own limits on the amount of PMSRs include in captial and eliminates the authority of the FDIC to limit the amount of PMSRs that savings associations may count in their capital.

Section 475 also requires that any PMSRs included in capital be valued at no more than 90 percent of fair market value and that such fair market value be determined at least quarterly. Savings associations are subject to identical limitations under the OTS capital rule and previously under the FDIC's PMSR rule.

On February 25, 1992, the FDIC Board of Directors adopted a final rule amending its capital regulations so that the FDIC's PMSR rule no longer applies to thrifts, but only to insure state-chartered nonmember banks.

The OTS has determined that it does not need to adopt a rule expressly establishing OTS's authority to set the amount of PMSRs includable in capital, prior to final adoption of this rule. The OTS capitol rule [3] already imposes the

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[1] See the preamble to the final FDIC PMSR rule for a full discussion of mortgage servicing and the reasons that the percentage-of-capital, valuation, discounting and other provisions were adopted. 55 FR 53137 (Dec. 27, 1990).

[2] Public Law 101-242, 105 Stat. 2236 (Dec. 19, 1991)

[3] The provisions of the OTS capital rule dealing with PMSRs are set forth in 12 CFR section 567.5(a)(2)(ii), 567.5(a)(2)(iii) and 567.9(c)(1).

90 percent fair market value and quarterly valuation requirements contained in section 475 of FDICIA. The HOLA and the OTS capital rule do not set forth, however, a limitation on the amount of PMSRs includable in capital or the terms of which PMSR is includable.

Pending issuance of this rule, the OTS, as a matter of policy, will require all associations to continue to comply with the percentage of capital and other restrictions in the FDIC rule. As a result, while this proposal is pending, all associations must continue to comply with the 50 percent of core capital and 100 percent of tangible capital limits previously applicable to thrifts under the FDIC's PMSR rule.

V. Request for Comment

The OTS requests comment on all aspects of this proposed rule and solicits specific comments on the following issues:

A. The need to retain the requirement of the FDIC's rule for an annual independent market valuation of PMSRs;

B. The appropriateness of applying the same valuation criteria and independent review requirement to PCCRs;

C. The appropriateness of the proposed approach to the discounting and valuation of PMSRs and PCCRs, particularly the requirement that the discount rate used in determining amortized book value be no lower than that used at original purchase; and

D. The appropriateness of the proposed OTS transition provision for PMSRs and the grandfathering provision for CDIs.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this proposal will not have a significant or disproportionate economic impact on a substantial number of small savings associations. Furthermore, this proposed rule would not impose any new recordkeeping or other requirements on any associations. It generally would retain the current treatment of thrifts. PMSRs and would allow PCCRs to be counted in thrifts' capital. The provisions of this rule, including the determination that CDIs do not constitute qualifying intangibles, will not have substantial impact on a small number of associations. The rule will not have a disproportionate impact on small associations. Accordingly, a Regulatory Felexibility Act analysis is not required.

Executive Order 12291

The Director of the OTS has determined that this proposed regulation does not meet any of the conditions set forth in Executive Order 12291 for designation as a major rule. This proposed rule generally maintains the current treatment under the FDIC's rule of thrifts' PMSRs and permits them to count PCCRs in capital. The provisions of this rule having a restrictive impact will only effect a small number of associations, who will benefit from the proposed grandfathering treatment. Consequently, a Regulatory Impact Analysis has not been prepared.

List of Subjects in 12 CFR Part 567

Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thift Supervision proposes to amend part 567, subchapter D, title 12 of the Code of Federal Regulations as follows:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat 280 (12 U.S.C. 1463); sec. 5, 48 Stat, 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1467a).

2. Section 567.5 is amended by revising paragraphs (a)(2)(i) and (a)(2)(ii), and by removing and reserving paragraph (a)(2)(iii) to read as follows:

§ 567.5 Components of capital.

(a) * * *

(2) * * * (i) Intangible assets are deducted from assets for purposes of determining core capital except as provided in paragraph (a)(2)(ii) of this section and § 567.12 of this part.

(ii) Paragraph (a)(2)(i) of this section does not apply to qualifying supervisory goodwill held by an eligible savings association (as defined in § 567.1(h) of this part) to the extent permitted by this paragraph. The amount of qualifying supervisory goodwill may not exceed the applicable percentage of adjusted total assets as calculated for the tangible capital requirement set forth in the following table:

	Percent
Prior to Jan. 1, 1992	1.500
Jan. 1, 1992–Dec. 31, 1992	1.000
Jan. 1, 1993–Dec. 31, 1993	0.750
Jan. 1, 1994–Dec. 31, 1994	0.375
Thereafter	0

(iii) [Reserved]

* * * * *

3. Section 567.6 is amended by revising paragraph (a)(1)(iv)(L) to read as follows:

§ 567.6 Risk-based capital credit risk weight categories.

(a) * * *

(1) * * *

(iv) * * *

(L) Any intangible assets not deducted from capital pursuant to § 567.5(a)(2) of this part;

* * * * *

4. Section 567.9 is amended by revising paragraph (c)(1) to read as follows:

§ 567.9 Tangible capital requirement.

* * * * *

(c) * * *

(1) Any intangible assets, except as provided in § 567.12 of this part; and

* * * * *

5. A new section 567.12 is added to read as follows:

§ 567.12 Qualifying intangible assets.

(a) *Scope.* This section prescribes the maximum amount of qualifying intangible assets that savings associations may include in calculating tangible and core capital. The section also sets forth the criteria that must be satisfied for intangible assets to qualify for inclusion in assets and capital.

(b) *Definition. Qualifying intangible assets* (qualifying intangibles) for purposes of determining tangible and core capital under this part, means purchased mortgage servicing rights and purchased credit card relationships. These assets will be recognized as qualifying intangibles included in capital only to the extent they meet the limitations and restrictions set forth in this section.

(c) *Qualifying criteria.* (1) In determining the appropriateness of including particular types of intangible assets other than goodwill in a savings association's capital calculation, the Office of Thrift Supervision (OTS) considers a number of factors, including:

(i) The ability to establish a market value for the asset on an annual basis through an identifiable stream of cash flows, the reliability and predictability of these cash flows, and the degree of certainty that the asset will hold this

market value notwithstanding the future prospects of the association;

(ii) The existence of an active and liquid market for the asset; and

(iii) The feasibility of selling the asset apart from the association or from the bulk of its assets.

(2) The OTS has determined that readily marketable purchased mortgage servicing rights and purchased credit card relationships generally meet the three criteria in paragraph (c)(1) of this section and, thus, are qualifying intangible assets. Purchased mortgage servicing rights may be included in (that is, not deducted from) tangible and core capital and purchased credit card relationships may be included in core capital provided that these qualifying intangibles comply with the conditions and limitations of this section. Qualifying intangibles will be deducted from assets and capital to the extent they do not meet the criteria of this section. Other identifiable intangible assets, including core deposit intangibles not grandfathered pursuant to paragraph (i) of this section, are not qualifying intangibles and must be deducted from assets and capital, except as provided by § 567.5(a)(2)(ii) of this part.

(d) *Annual and quarterly market valuations.* An independent market valuation of qualifying intangibles shall be performed at least annually. The annual independent market valuation shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or attrition rates. The valuation shall be based on an analysis of the current fair market value of the qualifying intangibles determined by applying an appropriate market discount rate to the net cash flows expected to be generated from the intangibles. This annual independent market valuation may be based on a review and analysis by an independent valuation expert of the reasonableness of the internal calculations and assumptions used by the association to determine fair market value. In addition to the annual independent market valuation, the association shall calculate an estimated fair market value for the qualifying intangibles at least quarterly.

(e) *Quarterly determination of book value.* Qualifying intangibles shall be carried at a book value that does not exceed the discounted amount of estimated future net cash flows expected to be generated from such assets. Management of the association shall review the carrying value at least quarterly, document its review adequately, and adjust the book value as necessary. If unanticipated prepayments or attrition occur, a write-down of the book value of the qualifying intangibles should be made to the extent that the discounted amount of cash flows is less than the carrying amount of the assets. The association shall use a discounted approach in evaluating the future net cash flows expected to be generated from the qualifying intangibles. The discount rate used for this book value calculation shall not be less than the original discount rate applied to the qualifying intangibles at the time of their acquisition, based upon the estimated net cash flows and the price paid at the time of purchase.

(f) *Value limitation.* For purposes of calculating capital under this part, the balance sheet assets for qualifying intangibles shall be reduced to an amount equal to the lesser of:

(1) 90 percent of the fair market value of the intangibles determined in accordance with paragraph (d) of this section;

(2) 90 percent of the original purchase price paid for the intangibles; or

(3) 100 percent of the remaining unamortized book value of the intangibles determined in accordance with paragraph (e) of this section.

(g) *Core capital limitation.*—(1) *Aggregate limit.* The maximum aggregate amount of qualifying intangibles allowed to be included in core capital shall be limited to the lesser of:

(i) 50 percent of the amount of core capital that exists before the deduction of any disallowed qualifying intangibles; or

(ii) The amount of qualifying intangibles determined in accordance with paragraph (f) of this section.

(2) *Sublimit for purchased credit card relationships.* In addition to the aggregate limitation on qualifying intangibles set forth in paragraph (g)(1) of this section, a sublimit will apply to purchased credit card relationships. The maximum allowable amount of purchased credit card relationships will be limited to the lesser of:

(i) 25 percent of the amount of core capital that exists before the deduction of any disallowed qualifying intangibles; or

(ii) The amount of qualifying intangibles determined in accordance with paragraph (f) of this section.

(h) *Tangible capital limitation.* The maximum allowable amount of qualifying intangibles for purposes of calculating association's tangible capital shall be the same amount includable in core capital in accordance with the limitations set by paragraph (a) of this section. Accordingly, the same amount of qualifying intangibles must be deducted from assets and capital in computing associations' tangible capital that is deducted in computing core capital in accordance with paragraphs (g) of this section.

(i) *Grandfathering.* (1) Notwithstanding the core capital and tangible capital limitations set forth in paragraphs (g) and (h) of this section, any otherwise disallowed purchased mortgage servicing rights that were acquired on or before February 9, 1990, and any otherwise disallowed purchased mortgage servicing rights for which a contract to purchase the servicing rights existed on February 9, 1990, may be grandfathered and recognized for regulatory capital purposes under this part to the extent permitted by the OTS. Grandfathered purchased mortgage servicing rights must be treated in accordance with generally accepted accounting principles and the requirements of paragraphs (d), (e), and (f) of this section. Grandfathered purchased mortgage servicing rights will count toward the core capital and tangible capital limitations described in paragraphs (g) and (h) of this section.

(2)(i) The OTS, on a case-by-case basis, may extend grandfathered treatment to all or part of the purchased mortgage servicing rights acquired by an association to replace its grandfathered purchased mortgage servicing if OTS determines that:

(A) An association is reducing its level of purchased mortgage servicing rights to the levels permitted by paragraphs (g) and (h), respectively, of this section at an acceptable rate; and

(B) The granting of such granfathered treatment is consistent with the association's safe and sound operation and with sound public policy.

(ii) The OTS may terminate such grandfathered treatment, wholly or partially, if it determines that either of the conditions in paragraph (i)(2)(i) of this section are not being satisfied by any time.

(3) Core deposit intangibles resulting from transactions consummated or under firm contract on the effective date of this rule may be grandfathered and recognized for capital purposes under this part, to the extent permitted by OTS, provided that such core deposit intangibles are treated in accordance with generally accepted accounting principles and the requirements of paragraphs (d), (e), and (f) of this section.

(j) *Exemption for certain mortgage banking subsidiaries.*—(1) *Exemption standard.* Purchased mortgage servicing rights held by separately capitalized,

nonincludable subsidiaries generally will not be subject to the deduction and limitations set forth in this section. the deductions and limitations will apply to such purchased mortgage servicing rights, however, if the OTS determines that:

(i) The thrift and subsidiary are not conducting activities on an arm's length basis; or

(ii) The exemption should not be granted or allowed to continue in the interest of the safety and soundness of the association or sound public policy.

(2) *Applicable requirements.* If the OTS determines to grant or to permit the continuation of an exemption under paragraph (j)(1) of this section, the association receiving the exemption must ensure the following:

(i) The association's investments in, and extensions of credit to, the subsidiary are deducted from capital when calculating capital under this part;

(ii) Extensions of credit and other transactions with the subsidiary are conducted in compliance with the rules for covered transactions with affiliates set forth in sections 23A and 23B of the Federal Reserve Act, as applied to thrifts pursuant to §§ 563.41 and 563.42 of this subchapter; and

(iii) Any contracts entered into by the subsidiary include a written disclosure indicating that the subsidiary is not a bank on savings association, the subsidiary is an organization separate and apart from any bank or savings association, and the obligations of the subsidiary are not backed or guaranteed by any bank or savings association nor insured by the FDIC.

Dated: April 1, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Revision of Federal Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has long established and enforced under its rulemaking authority speculative position limits for futures contracts on various agricultural commodities. These limits were first established by the Commodity Exchange Authority, the Commission's predecessor agency, and last revised by the Commission in 1987. 52 FR 38914 (October 20, 1987). On August 2, 1991, the Commission requested public comment on two Petitions for Rulemaking to increase certain speculative position limits and exemptions therefrom. 56 FR 37049.

Based upon its consideration of the comments received in response to these Petitions for Rulemaking, and based upon its independent analysis, the Commission is proposing amendments to these rules. Generally, these amendments maintain the current speculative position limit levels for the delivery months, with one exception, and propose to increase limit levels for the deferred months in the specified contracts. The proposed structure includes differing levels for single month limits and the limits on all-months combined. In addition, the Commission is proposing to combine speculative limits for both futures and options thereon. Finally, the Commission notes that the significant increases which it is proposing to the individual month limit levels and the combining of futures and option limits which creates an implicit spread exemption for those instruments alleviates the need for specific spread exemptions. Nevertheless, the Commission is proposing to continue an exemption for spread positions within the same crop-year. The level of this exemption is being proposed to be modified consistent with the Petition for Rulemaking of the Chicago Board of Trade.

DATES: Comments must be received by June 12, 1992.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 and should make reference to "Revision of Federal Speculative Position Limits."

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254–3201 or 254–6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Framework

Speculataive position limits have been a tool for the regulation of the futures markets for over a half-century. During this time, the Congress consistently has expressed confidence in the use of speculative position limits as an effective means of preventing unreasonable or unwarranted price fluctuations. *See*, H.F. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935); See also, H.R. Rep. No. 624, 99th Cong., 2d Sess. 44 (1986).

In this regard, section 4a(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6a(1), states that;

> [E] excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

Accordingly, section 4a(1) of the Commodity Exchange Act, 7 U.S.C. 6a(1) (1988) ("Act"), provides the Commission with the authority to:

> Fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

B. Regulatory Framework

Generally, there are three elements to the regulatory framework of speculative position limits. They are the levels of the limits, the exemptions from them (in particular, for hedgers), and the policy on aggregating accounts. Undergirding this framework are the basic determinations of the Commission that all contract markets, absent an exemption, must have speculative position limits, and that responsibility for speculative position limits be lodged with both the Commission and the exchanges.[1] Since its creation, the Commission periodically has reviewed each of these policies pertaining to speculative limits.[2]

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[1] In this regard, it should be noted that the Commission directly administers speculative position limits for futures contracts on many domestic agricultural commodities. See, 17 CFR 150.2. In contract, Commission Rule 1.61, 17 CFR 1.61, requires that for all option contracts, and for futures contracts on all other commodities, exchanges adopt and enforce speculative position limits. Exchange-set speculative position limits are approved by the Commission under the standards set forth in Rule 1.61 and under section 5a(12) of the Act. Section 4a(5) of the Act provides that violation of such an exchange-set speculative position limit that has been approved by the Commission, in addition to being an enforceable violation of exchange rules, is also a violation of the Act.

[2] Initially, for example, the Commission redefined "hedging" (42 FR 42748 (August 24, 1977)), raised speculative position limits in wheat (41 FR 35060 (August 19, 1976)), and in 1979 issued its Statement of Policy On Aggregation of Accounts and Adoption of Related Reporting Rules ("1979 Aggregation Policy"), 44 FR 33839 (June 13, 1979).

Continued

As part of this continuing reexamination of speculative limit policies, the Commission, in 1987, completely revised Federal speculative position limits. Federal speculative position limits apply to contract markets on domestic agricultural commodities and are administered directly by the Commission. Previously, the Commission's predecessor agency, the Commodity Exchange Authority, administered speculative position limits for futures contracts on many of those commodities which were then regulated under the Act. These included speculative position limits on corn, wheat, other grains, cotton, soybeans and other agricultural commodities.[3] See, 17 CFR part 150 (1975).

During the 1987 revisions, 52 FR 38914 (October 20, 1987), the Commission added Federal speculative position limits for soybean meal and soybean oil. Anomalously, due to the historial development of the Federal limits, speculative position limits on these two domestic agricultural commodities previously had been set by the appliable exchange.

The Commission, at the time, also amended the structure and levels of the Federal speculative position limits. It restructured speculative position limits by establishing them by contract market, rather than generally by commodity. The Commission generally proposed to increase limit levels progressively from the spot month limit, which was not proposed to be increased, to a higher individual-month limit, with a yet-higher all-futures combined limit. However, the rules, as promulgated, did not provide for such stepped increases. Instead, the rules as amended generally maintained the existing structure of a uniform spot and single month level with the addition of an increased all-months-combined level.[4]

C. Petitions for Rulemaking

The Commission has received four petitions for rulemaking, the first from the Chicago Board of Trade ("CBT"), the second from the New York Cotton Exchange ("NYCE"), the third from the Kansas City Board of Trade ("KCBT") and the fourth from the Minneapolis Grain Exchange ("MGE"). These petitions requested that the Commission amend its rules to increase Federal speculative limits in the CBT corn, wheat, oats, soybeans and soybean oil and meal futures contracts, in the NYCE's cotton No. 2 futures contract, and in the KCBT's and MGE's wheat futures contracts. The CBT asnd NYCE also requested that the Commission expand the current exemption for spread positions between months within the same crop-year to an exemption for spread positions between any months, outside of the spot month, regardless of the crop year and to increase the over-all level of this exemption. The CBT separately sought Commission approval for increases to the exchange-set speculative position limits on these commodities.[5]

Specifically, the CBT and NYCE Petitions requested that the speculative position limits for these commodities be raised in the single month and all-months categories. The petitions, with one exception, did not ask that the spot month limits be changed.[6] The CBT and NYCE supported their Petitions for increased speculative position limits based on the growth in volume of trading and on an increased frequency of large speculative positions near single month limits in individual futures months in these commodities since the limits were last amended in 1987. Both the KCBT's request of an increase consistent with the increases requested by the CBT, and the MGE's request of an increase in the all-months limit from six million bushels to nine million bushels were based upon concerns of competitive parity.

A comparison of the current limit levels, which are shown in parentheses, and those proposed by the exchanges are shown in the following table.

Subsequently, the Commission modified and updated speculative position limits by issuing a clarification of its hedging definition with regard to the "temporary substitute" and "incidental" tests (52 FR 27195 (July 20, 1987)), and guidelines regarding the exemption of risk-management positions from exchange-set speculative position limits in financial futures contracts. 52 FR 34633 (September 14, 1987). Moreover, in 1988, the Commission promulgated Commission Rule 150.3(a)(4), an exemption from speculative position limits for the positions of multi-advisor commodity pools and other similar entities which use independent account controllers. The Commission subsequently amended Commission Rule 150.3(a)(4), broadening its applicability to commodity trading advisors and simplifying and streamlining the application process. 56 FR 14308 (April 12, 1991).

Most recently, the Commission solicited public comment on, and subsequently approved, an exchange request for an exemption for futures and option contracts on certain financial instruments from the Commission Rule 1.61 requirement that speculative position limits be specified for all contracts. 56 FR 51687 (October 15, 1991).

[3] Federal speculative position limits were set by the Commodity Exchange Commission and administered by the Commodity Exchange Authority of the United States Department of Agriculture. The CEC set speculative position limits generically by commodity. The regulatory structure established by the CEC included a specified limit, by commodity, on speculative positions in any one contract month and in all-months-combined and an exemption for *bona fide* hedge positions. See, 17 CFR part 150 (1975). Except for an increase in the limit level for wheat and the addition of an exemptive provision for spread or arbitrage positions between futures and option contracts added by the Commission in 1984 (49 FR 36825 (September 20, 1984)), these speculative position limits remained unchanged until being thoroughly revised by the Commission in 1987.

[4] Not all Federal limits were promulgated with an identical spot month and single month limit. Generally, in promulgating these limits, the Commission noted that the applicable data supported a range of possible solutions. Those commenting on the grain and soybean complex limits expressed a strong preference for retaining the existing structure for limits, in part, in an attempt to promote greater liquidity in the back months. As the Commission noted:

> [t]he "telescoping feature of this structure-raising the single month level from the spot month level concerned many commenters * * * In general, the commenting exchanges objected on the grounds that "telescoping" could be conducive to unnecessary and artificial price aberrations.
>
> In contrast, those commenting on the proposed speculative position limits in cotton did not object to the higher single month limit level.

52 FR 38916. In light of the strong preferences expressed by the commenters, at that time, and the range of acceptable solutions which the data supported, the Commission acceded to the views of the commenters, adopting final rules for the grains and soybean complex which did not have the stepped increase between the spot month limit and the single month limit. However, the Commission's experience monitoring both Federal and exchange-set limits with stepped increases, as it expected, has been favorable, with none of the adverse consequences hypothesized by the opposing commenters occuring.

[5] The CBT in that submission has proposed to amend its speculative position limits for futures contracts consistent with the amended limits requested in its Petition for Rulemaking, and separately, to double its limits for options on futures contracts in the above-referenced commodities. Those exchange-set option speculative position limits currently have no corresponding Federal limits. CBT speculative limits for options establish separate levels for outright positions in each type or quadrant of option—long puts, short puts, long calls and short calls—as well as various spread positions between options and futures. Currently the levels of these outright limits are 600 futures-equivalent contracts in corn, wheat, soybeans, 720 in soybean meal, 540 in soybean oil and 400 in oats. A futures-equivalent option position is one in which the absolute number of options is adjusted to reflect the option's risk factor using the delta coefficient. This delta coefficient, which lies between −1 and 1, indicates the expected relationship between changes in the option premium and changes in the price of the underlying future.

The KCBT also proposed to increase its outright position limits for each quadrant of wheat options from 600 to 1200 future-equivalent contracts and to increase the limits for certain types of futures/option and option/option spread positions. The NYCE proposed to increase its limits applicable to certain option/option and future/option spread positions in its cotton No. 2 contracts.

These proposed amendments to the various exchanges' futures and option speculative position limit rules are currently under advisement pending completion by the Commission of this rulemaking proceeding. See, section 4a(5) of the Act.

[6] The Petition of the Chicago Board of Trade requested that the spot month limit for oats be increased from a level of two million bushels to three million bushels.

REQUESTED CHANGES TO COMMISSION RULE 150.2 SPECULATIVE POSITION LIMITS WITH EXISTING LIMITS, IF DIFFERENT, IN PARENTHESIS

[Limits on Net Positions in Contracts]

	CBT Corn	CBT Soybeans	CBT and KCBT Wheat	CBT Oats	CBT Soybean Meal	CBT Soybean Oil	MGE Wheat	NYCE Cotton #2
Spot month [1]	600	600	600	600 (400)	720	540	600	300
Individual months	1,600 (600)	1,600 (600)	1,200 (600)	600 (400)	1,440 (720)	1,080 (540)	600	900 (450)
All months combined	4,800 (2,400)	4,800 (2,400)	3,600 (1,800)	1,800 (400)	4,320 (2,160)	3,240 (1,620)	1,800 (1,200)	1,800 (1,200)

[1] Becomes effective for nearby futures on day preceding first notice day.

D. Response to Petitions

The Commission on August 2, 1991, published in the **Federal Register** notice of the Petitions for Rulemaking of the CBT and the NYCE and requested public comment on them. 56 FR 37049. The remaining two Petitions were received subsequently by the Commission.

Thirty-six comments were filed with the Commission in response to this request. Commenters included two futures exchanges; twenty-three commodity pool operators, commodity trading advisors or associations of such entities; ten persons or groups representing agricultural interests and the minutes of the April 22, 1991 meeting of the Commission's Agricultural Advisory Committee. Of the ten comments filed by agricultural interests, eight were opposed to the requested increases. The remaining commenters generally supported the petitions.

Many of those opposing the petitions for rulemaking expressed concern that the requested increases in limits would lead to "small numbers of entities holding large number of contracts." Others were concerned that such increased limits would permit mainly technical traders to assume larger positions in the market and that this posed risks to the market. Other commenters expressed the view that the terms and conditions of these contracts, especially those relating to delivery points and specifications, needed revision to assure the continued use of these contracts for hedging and price basing and that such revisions should precede any increase in speculative position limits.

Many of the commenters favoring raising the speculative position limits based their support on the belief that the structure of, and the participants in, the markets are evolving. These commenters contended that the main growth in volume in the futures industry is in the managed funds sector and that increased levels are required by these professional money managers. They further maintained that such managed funds represent an important source of potential additional liquidity for these markets. Others suggested that the existence of speculative position limits was a constraint on trading that was not present on competing foreign futures markets, leading to reductions in the market share of United States exchanges.

The exchange comments noted that since speculative position limits were last revised, there has been significant growth in cash and futures markets volumes in those commodities under consideration, herein. These comments further noted that, following the 1987 increase in speculative position limits, there was no increase in market volatility. Moreover, one exchange commenter suggested that different levels for the spot and deferred months would ensure orderly liquidations and is consistent with the observed behavior of commercials rolling forward positions as they mature.

II. Proposed Revisions

The Commission is proposing several revisions to the structure of Federal speculative position limits based upon its experience in administering these limits and after carefully considering the comments received in response to the Petitions for Rulemaking. These proposed revisions are in three areas. First, the Commission is proposing to unify speculative position limits for both futures and options thereon. Secondly, the Commission is proposing to maintain spot-month limits at their current levels and to increase, by amounts consistent with increases in the combined open interest of futures and delta-adjusted options for each market, the levels for the single-month and all-months limits. Finally, the Commission is proposing to amend the intra-crop year spread exemption by revising the exemption's limit levels to equal the all-months level, as petitioned.

A. Unified Futures and Options Levels

The Commission requested specifically the public's views on the advisability of combining the speculative position limits for futures contracts and options thereon in its **Federal Register** notice of the exchange's Petitions for Rulemaking. Few commenters, however, responded on this issue. Nevertheless, those who responded generally opposed the unification of futures and option speculative position limits. One commenter, a trade association for agricultural processors, opined that such limits should not be combined because "[f]utures and options are separate and unique instruments with different uses and characteristics and as such * * * speculative limits for either should be made independently." A commodity trading advisor commented that:

> Limits on options should be consistently modified to take into account expansion of limits on futures. At the same time, we would reiterate the intrinsic differences between options and futures. [I]n terms of risk management, investment time horizons, margin and capital requirements, options are very different instruments; however, options play a large role in many hedging strategies * * *.

Accordingly, the commenter "saw no compelling reason for the combination of futures and options limits."

An exchange commenter noted that:

> [T]here appears to be no reason for the Commission to continue to exclude Cotton No. 2 futures and options from the unified treatment accorded most other futures and options. Of course, were they to be combined, the deferred months limits should be increased to achieve parity between the present proposal for options and futures individual increases and a combined limit.
>
> Presently it appears that only agricultural futures that were subject to the 1936 amendments to the * * * Act continue to follow a two-tier approach * * *. This distinction does not appear to be based on a funtional basis but appears solely to be a historic anomaly.

However, if in considering the combining of Cotton No. 2 futures and options limits, the Commission were to intend to directly regulate not only cotton No. 2 future levels but option levels as well, we believe would be a step backward and the Exchange could not support such a development.

As noted by the above commenter, almost all exchange-set limits for futures and their related options are unified. This structure of unified limits is more appropriate for several reasons. First, because price movements in the two markets are highly related, the unified system more readily reflects the economic reality of a position in its totality. For instance, it should be noted that options in certain combinations create synthetic futures. Moreover, these, or other combinations, may be spread or offset against actual futures positions. Thus, through a variety of spread of arbitrage transactions, positions in one market may have a direct and immediate impact on pricing in the other.

Secondly, unified speculative limits provide the trader with greater flexibility. Currently, for domestic agricultural commodities, the size of positions are restricted to the applicable limit for each instrument, and for options, to each of four quadrants reflecting long or short, puts or calls. A unified speculative position limit removes this artificial constraint on the composition of the trader's position, capping only its total size.

Thirdly, traders should find such a unified speculative position limit easier to use and to understand. Under unified speculative position limits these economically offsetting positions would be netted.[7] In contrast, with the current separate futures and option limits, although such positions are netted under the futures/option spread exemption of Commission Rule 150.3(a)(2), the individual legs of the spread positions nevertheless must meet the applicable single month limits on futures and on option limits, by quadrant. Accordingly, simplification of speculative position limits by adopting a unified futures/option structure should result in greater certainty by traders of their compliance.[8]

Finally, as a consequence of the simpler structure, unified speculative position limits are easier to administer, resulting in more accurate and timely market surveillance. In this regard, the Commission already must consider option positions in determining compliance with Federal speculative position limits in light of the exemption of futures/option spreads from the Federal speculative position limit. See, 17 CFR 150.3(a)(2).[9]

Unifying domestic agricultural futures and options speculative position limits under Commission rules would require bringing option limits under part 150 of the Commission's Rules. As noted above, one commenter disapproved specifically of bringing option limits under Commission rules. While the Commission prefers to leave such responsibility with the self-regulators, for the reasons discussed above, in this instance, the applicable structure would be greatly improved by unification of futures and options limits. As noted, the current structure results merely from the historical development of these regulations.[10] In this regard, as part of the 1987 revisions, the Commission brought under its rules speculative position limits for futures contracts on serveral agricultural commodities which had previously been omitted for similar historical reasons with no perceptible ill-effect.

Finally, one commenter urged that unified limits not result in a lower over-all total position limit and that the Commission must adjust such a unified limit accordingly. However, the continued separation of futures and option limits will not lead to greater over-all limit levels. On the contrary, the Commission would analyze the request increases to futures limits and option limits similarly, whether they were unified or not. In this regard, the Commission specifically addressed this issue in promulgating Rule 1.61, stating that:

> [I]n reviewing such limits, the Commission will consider the options and futures market as a whole in determining whether exchange limits, either specified jointly for futures and options or separately, are set at appropriate levels.

46 FR 50938, 50944 (October 16, 1981).

Accordingly, the Commission believes that the benefits of revising the structure of Federal speculative position limits to include unified futures and option limits outweigh any potential inconvenience from so doing. Thus, the Commission is proposing to remove and reserve Rule 150.3(a)(2) which exempts from Federal speculative position limits positions in option contracts which offset the futures positions. Because such positions would be automatically netted under a unified speculative position limit, this provision would become unnecessary. In addition, the Commission is proposing to amend Rule 150.2 to include option positions on a futures-equivalent basis within the applicable speculative position levels and to amend Rule 150.1 by adding definitions of "futures-equivalent," "long" position and "short position."

In particular, "futures-equivalent" is proposed to be defined as an option contract which has been adjusted by the previous day's risk factor, or delta coefficient for that option.[11] Exchanges

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[7] Although one of the commenters noted that options have a differing risk profile than do futures, the option component of a combined futures/options speculative position limit may be calculated on a futures-equivalent basis. That is, the option position is adjusted by the option's delta to reflect its futures equivalent at prevailing futures price levels. The two positions can then be netted on a futures-equivalent basis. Thus, for different price levels, the unified speculative limit adjusts for the differing risk profiles of options and futures.

[8] Compliance with a unified futures/option speculative position limit requires a degree of continuous monitoring. Because an option's delta coefficient changes with changes in the underlying futures price and the option's remaining maturity, the option's futures-equivalency will also change over-time. Accordingly, adjustments may be necessary over-time to maintain an economically offsetting position.

Moreover, the delta coefficient is calculated daily, based on the futures closing price both under current exchange rules and as proposed, herein. The previous day's delta coefficient is used in determining compliance with speculative position limits at the close of trading. Consequently, a favorable change in the delta coefficient during a trading session may cause some positions which would have been out of compliance based on the previous day's delta coefficient to be in compliance if adjusted by the delta coeffficient based on that day's closing price. Exchanges having unified futures/option limits deem such traders to be in compliance to avoid the necessity for a trader to reduce a position which would be in compliance if adjusted to current market conditions. The Commission also would adhere to that compliance convention. Accordingly, the necessary adjustments in positions, both over-time and on a daily basis, appear not to present a compliance problem for the existing futures/option limits, which as noted above, is the accepted structure for all other contract markets.

[9] Option position information is required to be provided to the Commission by the exchanges on a weekly basis. See, 17 CFR 16.02. At the time the Commission adopted this exemptive provision, however, the exchanges agreed additionally to make surveillance information concerning specific option positions available to the Commission on as-needed basis. This arrangement has worked well for purposes of both market surveillance and enforcement of speculative position limits. Accordingly, the Commission is not proposing any increase of reporting burden or other change to the current reporting system as a consequence of unifying futures and option limits.

[10] The speculative limits for all exchange-traded options were initially set separately from the limits for futures contracts in light of the pilot basis under which exchange trading of options was reinstroduced after several decades during which such trading was prohibited. Subsequent to the ending of the pilot status for option trading, exchanges which set limits for both the futures contract and its related option, generally have integrated those limits, finding, for the reasons discussed above, that a unified structure is superior to separate limits. As a result, the only actively traded options markets with separate limits generally are those where the underlying futures contract has Federal limits.

[11] As explained above in note 8, positions which would not exceed the speculative position limit

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which use deltas for exchange-set speculative position limits are required to publish the delta coefficient on a daily basis under Commission Rule 16.01, 17 CFR 16.01 (1991).[12] Finally, proposed Rule 150.2 provides that "[n]o person may hold or control net long or net short positions" in excess of the stated limits. Such long positions are defined to include, for options, long calls and short puts, and for futures, long futures. Short positions mirror the long positions.

B. Speculative Position Limit Levels

The fundamental tenet in the Commission's setting of speculative position limits is that such limits must be "based upon the individual characteristics of a specifc contract market * * * " 52 FR at 6815. The corollary to this principal is that not all speculative position limits for all types of commodities necessarily will be the same.[13] Thus, the limits which are appropriate for certain types of commodities, such as agricultural commodities, may be appropriate for other tangible or intangible commodities.[14] Nevertheless, the broad criteria of Rule 1.61 relating to the setting of exchange-set speculative position limits are applicable equally to the setting of Federal speculative position limits. *Id.*, at n.3.

Commission Rule 1.61 provides that the levels at which speculative position limits shall be set be based on several factors, including:

> Position sizes customarily held by speculative traders on such market for a period of time selected by the contract market, which shall not be extraordinarily large relative to total open positions in the contract for such period. In addition to the above, upon a determination that the above standard is inappropriate for setting such limits, a contract market may base its determination on other factors which may include breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between futures market and cash market in the commodity underlying the futures contract.

17 CFR 1.16(a)(2).

Historically, the Commission has relied upon the distribution of speculative traders in setting the levels of speculative position limits. 52 FR at 38916. However, commenters have pointed out that open interest has increased dramatically in these markets since 1987, when Federal agricultural speculative position limits were last revised. Thus, a speculative trader holding a position at the limit would today account for a far smaller percentage of the total open interest than in 1987. Conversely, a trader today could hold a far larger position and yet not exceed the same percentage of open interest as represented by the limits in 1987. Accordingly, it appears that these two reference points for setting speculative position limits, distribution of speculative traders and percentage of open interest, have not necessarily moved in close correlation over the period.

In light of the above, the Commission is proposing to calculate the levels for speculative position limits with reference to the size of the percentage of open interest of a limit position, or with reference to the distribution of trader positions, whichever is greater. This approach will permit speculative position limits to reflect better the changing needs and composition of the futures markets, while adhering to the policies of the Act and Commission Rule 1.61. Although the Commission in setting levels is proposing to place greater reliance on the criterion of percentage of open interest represented by a particular level than previously, it has always recognized that there is a range of acceptable limit levels. To be sure, the Commission has noted that even when relying on a single criterion, such as distribution of trader positions,

> Particular data concerning the distribution of speculative traders in a market can result in a range of acceptable speculative position limits.

Id.

The Commission, in proposing to set speculative position limit levels based upon the percentage of a limit position to the average open interest in a market, is relying upon its ten years experience of oversight of exchange-set speculative limits as well as its even longer history directly administering the Federal limits. Based upon this experience, the Commission has determined, by observation of speculative limits on various agricultural commodities, that, for these markets, single-month and all-month limits on futures positions combined with option positions on a delta-equivalent basis of no more than ten percent of the combined markets' open interest for contracts with combined open interest below 25,000 is not excessively large under the criteria of Commission Rule 1.61. However, the Commission is proposing a minimum limit level of 1,000 contracts both for the individual, non-spot month and the all-month levels.[15]

For those markets in agricultural commodities with combined average open interests greater than 25,000, the Commission is proposing a marginal increase of 2.5%. Thus, the size of the speculative limit will continue to increase, but at a slower rate. This is based upon the universal observation that the size of the largest individual positions in a market do not continue to grow in proportion with increases in the overall open interest of the market.[16] Of course, as stated previously by the Commission, (52 FR at 38917), the spot month limit is based most appropriately on an analysis of current deliverable supplies and the history of various spot month expirations.[17]

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when adjusted by the same day's delta, rather that the previous day's delta, will nevertheless be deemed to be in compliance.

[12] Not all exchanges currently publish delta coefficients for every contract market in which there are Federal speculative position limits. The rule, as proposed, is based upon the assumption that those contract markets which are not currently publishing delta coefficients will undertake to do so. In this regard, the Commission is specifically requesting comment on the burden that this would place on any exchange which currently does not calculate and publish the delta coefficient.

[13] Section 4a(1) of the Act, 7 U.S.C. 6a(1), recognizes this principal, providing, in part, that:

> Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months * * *.

[14] As noted above, the Commission has requested comment on (56 FR 51687), and approved, proposed rule amendments of the Chicago Merchantile Exchange to replace speculative position limits in selected financial and foreign currency futures with trader accountability rules. The factors considered in that case, such as the depth of the underlying cash market and ease of arbitrage, differ from agricultural markets.

[15] In measuring the average open interest for the single month limit, the Commission has analyzed open interest for whichever month achieved the highest open interest.

In measuring the average open interest for both the single month and all-months limits, the Commission calculated average open interest for both the most recent one and three calendar-year periods, using the higher of the two. By using the higher of the two measures, the Commission has recognized that certain mature markets will have varying open interest from year to year, while less mature markets may have steadily growing open interest.

[16] The limit level being proposed is rounded-up to the closest interval of 250 contracts between the 1,000 to 2,000 contract level. Above the 2,000 contract level, the limit is rounded-up from the actual percentage of open interest to the nearest 500 contract interval.

[17] Based upon these criteria, the CBT requested that the Commission raise the spot month limit levels for CBT oats from its current level of two million bushels to three million bushels. In support of this request, the CBT specifically noted that structural changes in the cash market for oats have resulted in higher levels of stocks in regular warehouses and that the proposed increases to the spot month limit is consistent with the increased levels of stocks. Based on its own review of the relevent data, the Commission concurs in this conclusion, and is proposing that the spot month lmit, as well as deferred month limits, be raised accordingly.

In contrast to the situation of oats, several commenters opined that the terms and conditions of various other agricultural contracts needed to be

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The Commission notes that its large trader data indicates that limits based on open interest as described above should accommodate the normal course of speculative positions in agricultural markets.[18] The levels derived using this method of analysis generally are consistent with the largest exchange-set speculative limits approved by the Commission under Rule 1.61 for contract markets in agricultural commodities at corresponding levels of open interest. However, the Commission, based on its surveillance experience and monitoring of exchange and Federal speculative position limits, is satisfied that the levels indicated by this methodology, although near the outer bounds of the levels which have been approved previously, nevertheless will achieve the prophylactic intent of section 4(a) of the Act and Commission Rule 1.61, thereunder.

In proposing this approach based on open interest, the Commission recognizes that the proposed increases are not identical for all contract markets for the same or similar commodities. Previously, the Commission endeavored, whenever possible, to provide such disparate contract markets with the same limit levels in light of the competitive concerns of such exchanges. In this regard, the Petition for Rulemaking of the Kansas City Board of Trade specifically requested that speculative position limit levels for its commodities be kept the same as those of the Chicago Board of Trade. However, in light of the magnitude of the increases which the Commission is now proposing based upon actual open interest, the more appropriate approach is to apply these criteria to each contract market independently. In this regard, the Commission is of the view that the increases based on open interest which it is proposing, although not identical for each contract market, could in no way disadvantage a contract market.[19]

Finally, the Commission is proposing to delete Federal speculative position limits for those contract markets which have been dormant within the meaning of Commission Rule 5.2, 17 CFR 5.2, for an extended period or which otherwise are no longer extant. Typically, these contract markets have been dormant for over a decade, or more.

Based upon the above criteria, the Commission is proposing the following speculative position limits levels:

CURRENT AND PROPOSED FEDERAL SPECULATIVE POSITION LIMIT FOR SELECTED NON-DORMANT CONTRACTS IN CONTRACTS OR CONTRACT EQUIVALENTS [1]

	Current futures limits (net long or short)			Current option limits by quadrant [3] (net long or short)	Proposed unified futures/option limits (net long or short)		
	Spot month	Single month [2]	All months	All months	Spot month	Single month [2]	All months
CBT Corn	600	600	2400	600	600	5500	9000
CBT Soybeans	600	600	2400	600	600	3500	5500
CBT Wheat	600	600	1800	600	600	3000	4000
CBT Soybean Oil	540	540	1620	540	540	3000	4000
CBT Soybean Meal	720	720	2160	720	720	3000	4000
CBT Oats	400	400	400	400	600	1000	1500
KCBT Hard Winter Wheat	600	600	1800	600	600	2000	3000
MGE Spring Wheat	600	600	1200	600	600	1000	1500
NYCE Cotton #2	300	450	900	300	300	2500	3500
MCE Corn	600	600	600	600	600	600	600
MCE Wheat	600	600	600	600	600	600	600
MCE Soybeans	600	600	600	600	600	600	600

[1] Unlike current Commission Rule 150.2, which establishes limit levels in terms of bushels, bales, tons, or pounds of the commodity, this table expresses all limits in terms of futures contract equivalents. The symbol "CBT" means Chicago Board of Trade, "KCBT" means Kansas City Board of Trade, "MGE" means Minneapolis Grain Exchange, "NYCE" means New York Cotton Exchange, and "MCE" means MidAmerica Commodity Exchange.

In the case of commodities traded on the MCE, the number of contracts are expressed in terms equivalent to the larger size delivery units which are traded on the CBT. In addition pursuant to exchange rules, the spot month limit noted for MCE soybean meal decreases to lower levels as the delivery month progresses.

Dormant or otherwise non-extant contracts which are not set out in this table include NYCE cotton #1, KCBT gulf wheat, soybeans, and corn; MGE durum wheat, corn, oats, and soybeans; and Chicago Rice and Cotton Exchange ("CRCE") wheat, corn, and cotton. The limits for these contracts are proposed to be deleted. In addition, MGE white wheat, MCE soybean meal, and MCE oats are not shown in this table, but are included in the proposed regulations.

[2] The single month futures limit is increased under current rules to two times the amount to the extent that excess is part of a spread between months of the same future within the same crop year, and excluding the spot month. However, the single month limit is proposed to be increased to the all months level provided that the excess is a futures/futures, option/futures or options/option spread relating to the option and underlying future, within the same crop year and excluding the spot month.

In addition, under current exchange rules, higher single month future limits are in effect for positions representing delta-neutral spreads between futures and options, pursuant to the exemption stated in Paragraph 150.3.

[3] Exchange-set speculative limits are specified by individual type of quadrant (i.e., long calls, short calls, long pits and short pits) and apply for each quadrant to all months. Higher limits are specified for delta neutral option/option and option /future spread positions within the same crop year.

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revised, especially regarding delivery points. These commenters suggested that speculative limits should not be increased until such revisions are effective. The Commission is aware of these concerns over delivery specifications, having commenced a study of these issues. See, Division of Economic Analysis study entitled, "An Analysis of the Delivery-Point Provision of the Chicago Board of Trade's Corn, Wheat, and Soybean Futures Contracts." In this regard, the CBT has submitted for Commission consideration proposed rule amendments to address these, and other issues involving delivery on these contracts. However, because the spot month speculative position limit is not being proposed to be changed, the Commission believes that these delivery issues need not be linked with the proposed increases to the speculative position limits.

[18] Nevertheless, as noted above, the Commission does not intend to rely on open interest as a reference point in setting limits to the exclusion of distribution of trader positions. Accordingly, the Commission would also consider distribution of trader positions in setting speculative position limits in those instances when it appears that levels based on the open interest criteria outlined above would constrain the normal pattern of speculative trading.

[19] In this regard, as noted above, the Commission's large trader data indicates that the levels proposed based on open interest exceed the size of speculative position typically observed in agricultural markets. Further, under the calculations discussed above, those contract markets which have lower levels of open interest, especially those at the minimum 1,000 contract level, could have limits which are a larger percentage of total open contracts.

C. Spread Exemptions

The Chicago Board of Trade's Petition for Rulemaking requested that the exemption in Commission Rule 150.3 for spread positions between single months of a contract within the same crop year be modified. The petition requested that the exemption be extended to all spread positions regardless of crop year and that the level be modified from twice the individual month level to the all-months level. The Commission specifically requested comment on these aspects of the petition in the **Federal Register.** 56 FR at 37050.

Several commenters supported the CBT's petition with regard to the intra-crop year spread. In general, they maintained that the limitation of the spread exemption to months within the same crop year tended to cause spreads to change and thereby distorted prices. However, the Commission has previously noted that there can be substantial difference in market impact between inter-month spreads which are between months within the same crop year and those which are between months across different crop years. See 53 FR 23412. Inter-month spreads that cross crop years, under certain circumstances, may act more like separate outright positions than a spread which is within the same crop year.

One commenter, although supporting an expanded exemption, recognized this distinction, pointing out the potential for commodity prices to differ markedly between crop years, noting that:

> The expanded limits on intracrop year spreads have worked well since the Exchange proposed them and the CFTC adopted them. Although there may be times when the price difference between crop months are dramatic * * * most times the relationship of prices between futures months remain in general alignment * * *.
>
> [I]f the CFTC were to recede from direct regulation of position limits and allow each Exchange to set such limits * * * *, were the[re] dramatic crop year differences * * *, then the Exchange could act quickly to adjust its intercrop year limits to recognize these developments.

In addition to this potential for the separate legs of an inter-crop year spread to act more independently, the need for any specific inter-month spread exemption should be lessened greatly by the increases which are being proposed for many contracts in the limit levels for individual months. Historically, relatively low individual month limit levels, which were set equal to the spot month limit, necessitated the inter-month spread exemption. However, the increases to the individual month limits being proposed herein, in general, should diminish the need for such an exemption. Moreover, the Commission has exhibited flexibility with regard to this exemption when particular economic circumstances warrant. In this regard, its staff, on at least one occasion, based upon the specific economic circumstances, has taken a "no-action" position with regard to the prohibition on exceeding the individual month speculative position limit for inter-crop year spreads under this exemption. For these reasons, the Commission is not convinced that the exemption for inter-month spreads should be modified to permit generally such spreads across crop-years in excess of the applicable speculative position limit.

Although the Commission is not proposing to extend this exemption to spreads between months in different crop years, it has, nevertheless, reconsidered the level which is appropriate for the exemption. The Commission, as requested in the petition by the Chicago Board of Trade, is proposing to revise the level of the exemption to equal the all-months limit level for that contract. The Commission believes that this proposed revision is consistent with the significantly higher levels which are now being proposed for the individual month limits in many commodities, while simplifying the applicable structure. Accordingly, as proposed, the exemption would permit the separate legs of positions which are spread against other months within the same crop year, in total or in combination with outright positions in the same month, to equal the all-months level. Of course, the level of the outright positions cannot exceed the single month limit, nor does this exemption apply to positions within the spot month.

III. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (FRA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission has previoously determined that large traders are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* 47 FR 18618 (April 30, 1982). These speculative position limits affect only the largest speculative traders in a particular contract market. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action herein proposed will not have a significant economic impact on a substantial number of small entities. However, the Commission invites comments from any firms or other persons which believe that the promulgation of these rules might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seg.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including these proposed rules, is as follows:

Average Burden Hours Per Response—1.03.
Number of Respondents—165.
Frequency of Response—3.82.

The burden associated with these specific proposed rules is as follows:

Average Burden Hours Per Response—1.00.
Number of Respondents—155.
Frequency of Response—3.00.

Persons wishing to comment on this determination should contact Joe F. Mink, CFTC Clearance Officer, 2033 K St., NW., Washington, DC 20581; and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

List of Subjects in 17 CFR Part 150

Agricultural commodities, bona fide hedge positions, position limits, spread exemptions.

In consideration of the foregoing, pursuant to the authority contained in the Commodity Exchange Act, and in particular sections 2(a)(1), 2(a)(2), 4a, 4c, 5, 5a, 6b, 6c, and 15, 7 U.S.C. 2, 4, 4a, 6a, 6c, 7, 7a, 12a, 13a, 13a-1, and 19, the Commission hereby proposes to amend part 150 of chapter I of title 17 of the Code of Federal Regulations as follows;

PART 150—LIMITS ON POSITIONS

1. The authority citation for part 150 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 6a, 6c, and 12a(5) (1988).

2. Section 150.1 is proposed to be amended by adding new paragraphs (e) and (f), to read as follows:

§ 150.1 Definitions.

* * * * *

(f) *Futures-equivalent* means an option contract which has been adjusted by the previous day's risk factor, or delta coefficient, for that option which has been calculated at the close of trading and published by the applicable exchange under § 16.01 of this chapter.

(g) *Long position* means a long call option, a short put option and a long underlying futures contract. "Short" position means a short call option, a long put option and a short underlying futures contract.

3. Section 150.2 is proposed to be amended by revising it to read as follows:

§ 150.2 Position limits.

No person may hold or control positions, separately or in combination, net long or net short, for the purchases or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of the following:

Contract	Unit of limit	Spot month	Single month	All-months
Chicago Board of Trade:				
Corn	Million Bushels	3	27.5	45
Oats	Million Bushels	3	5	7.5
Soybeans	Million Bushels	3	17.5	27.5
Wheat	Million Bushels	3	15	20
Soybean Oil	60,000 Pounds	540	3000	4000
Soybean Meal	100 Tons	720	3000	4000
Kansas City Board of Trade:				
Hard Winter Wheat	Million Bushels	3	10	15
Minneapolis Grain Exchange:				
Hard Red Spring Wheat	Million Bushels	3	5	7.5
White Wheat	Million Bushels	3	5	5
New York Cotton Exchange:				
Cotton (Contract No. 2)	Hundred Bales	300	2500	3500
Midamerica Commodity Exchange:				
Corn	Million Bushels	3	3	3
Oats	Million Bushels	2	2	2
Soybeans	Million Bushels	3	3	3
Wheat	Million Bushels	3	3	3
Crude Soybean Meal	100 Tons	400	400	400

4. Section 150.3 is proposed to be amended by removing and reserving paragraph (a)(2) and by revising paragraph (a)(3) to read as follows:

§ 150.3 Exemptions.

(a) * * *

(3) Spread or arbitrage positions between single months of a futures contract and/or, on a futures-equivalent basis, options thereon, outside of the spot month, in the same crop year; *provided however,* That such spread or arbitrage positions, when combined with any other net positions in the single month, do not exceed the all-months limit set forth in § 150.2 of this part; or

* * * * *

Issued in Washington, DC, this 6th day of April, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-8306 Filed 4-10-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 91N-0094 Through 91N-0103]

Food Labeling: Health Claims; Report of Nutrient-Disease Relationship; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of 10 reports on specific nutrients and diseases identified by the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). These nutrients and diseases are: (1) Calcium and osteoporosis; (2) sodium and hypertension; (3) lipids and cardiovascular disease; (4) lipids and cancer; (5) dietary fiber and cancer; (6) dietary fiber and cardiovascular disease; (7) folic acid and neural tube defects; (8) antioxidant vitamins and cancer; (9) zinc and immune function in the elderly; and (10) omega-3 fatty acids and heart disease. The reports were prepared by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB).

DATES: The reports became publicly available on February 20, 1992.

ADDRESSES: Submit written requests for single copies of each of the reports to the Special Publication Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814 along with $18.00 for each report requested ($180.00 for the set).

Copies of each report are available for public examination at LSRO, FASEB office (address above) and at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF-201), Food and Drug Administration, 200 C st. SW., Washington, DC 20204, 202-245-1561.

SUPPLEMENTARY INFORMATION: FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide

information to FDA on general and specific issues of scientific fact associated with food and cosmetic safety.

On November 8, 1990, the 1990 amendments to the Federal Food, Drug, and Cosmetic Act were enacted (Pub. L. 101-535). Among other things, the 1990 amendments outline the circumstances in which diet-disease claims on food labels or labeling would not misbrand the food. The 1990 amendments require that FDA specifically consider 10 topic areas. These are: (1) Calcium and osteoporosis (Docket number 91N-0094); (2) sodium and hypertension (Docket number 91N-0095); (3) lipids and cardiovascular disease (Docket number 91N-0096); (4) lipids and cancer (Docket number 91N-0097); (5) dietary fiber and cancer (Docket number 91N-0098); (6) dietary fiber and cardiovascular disease (Docket number 91N-0099); (7) folic acid and neural tube defects (Docket number 91N-0100); (8) antioxidant vitamins and cancer (Docket number 91N-0101); (9) zinc and immune function in the elderly (Docket number 91N-0102); and (10) omega-3 fatty acids and heart disease (Docket number 91N-0103).

On March 20, 1991, FDA asked LSRO, FASEB, as a task under the contract, to prepare reports summarizing and critically evaluating relevant available scientific data on each of the above nutrient-disease relationships.

Preliminary drafts of these reports were submitted to the agency by LSRO, FASEB, in 1991, and FDA discussed these draft reports in its proposals on the 10 topics (56 FR 60566 through 60878, November 27, 1991). The availability of these final reports was announced by Kenneth Fisher of LSRO, FASEB at the Public hearing that FDA held on its food labeling proposals on January 30 and 31, 1992. The final reports were submitted to FDA during the comment period on the proposals and will be treated as comments by the agency.

FDA is now announcing that the final reports became available to the public on February 20, 1992.

The final reports are generally consistent with the draft reports. The differences between the draft and final reports will be discussed in the final rule on the particular nutrient-disease topic.

Dated: April 7, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-8405 Filed 4-10-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Part 121

[Public Notice 1604]

Amendments to the International Traffic in Arms Regulations (ITAR, Category I. Firearms

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: In an effort to streamline the United States Munitions List, the proposed changes would exclude from licensing authority the following nonautomatic weapons: (1) Manually operated bolt, lever, and pump action firearms; (2) single and doubled barreled single shot firearms; and (3) revolvers. A clarification of combat shotguns is also included in the proposed changes.

DATES: Comments must be submitted on or before May 13, 1992.

ADDRESSES: Written comments should be sent to Suzanne M. Palmer, U.S. Department of State, Office of Defense Trade Controls, SA-6, rm. 228, Washington, DC 20522-0602, fax #703-875-6647.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Palmer, U.S. Department of State, Office of Defense Trade Controls, tel. 703-875-6644.

SUPPLEMENTARY INFORMATION: As part of an ongoing effort to streamline the U.S. Munitions List (USML), the Departments of State, Defense, and Commerce have determined that bolt action rifles, nonautomatic pistols (except sniper rifles and combat shotguns), and all revolvers should be removed from the USML. Our examination of the utilization of these items has confirmed that their primary function is for non-military application.

As a result, manually operated bolt, lever, and pump action firearms, single and double barreled single shot firearms (except sniper rifles and combat shotguns), and all revolvers will be removed from the USML and moved to the jurisdiction of the Department of Commerce, pending the imposition of controls under Section 6 of the Export Administration Act, "Human Rights and Antiterrorism."

The firearms in this proposed rule change will only be removed from the USML after the imposition of controls by the Department of Commerce. Additionally, pursuant to section 38(f) of the Arms Export Control Act, jurisdiction will not be transferred to the Department of Commerce until thirty days after a report of their removal from the USML is sent to the Speaker of the House of Representatives and to the Committee on Foreign Relations as well as the Committee on Banking, Housing and Urban Affairs of the Senate.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports. Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations be amended as set forth below.

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In section 121.1, Category I—Firearms, paragraphs (a) and (c) are revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category I—Firearms

*(a) Semi-automatic and fully automatic firearms identified in section 121.9 to caliber .50 inclusive, and all components and parts for such firearms. (See §§ 123.16-123.19 for exemptions.)

* * * * *

*(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application (e.g. close assault weapons systems and sniper rifles) regardless of caliber and all components and parts therof.

* * * * *

3. In section 121.9, paragraph (f) is removed, paragraph (g) is redesignated as paragraph (f), and paragraph (a) is revised to read as follows:

§121.9 Firearms.

(a) Category I includes semi and fully automatic pistols, rifles, carbines, and machine guns to caliber .50 inclusive. It includes all shotguns with a barrel length of less than 18 inches or any shotgun which may possess one or more of the following characteristics: bayonet mounting feature, large capacity magazine (greater than five rounds), automatic capability (full or burst), collapsable buttstock or not buttstock (pistol grip only), laser sight mounts, or barrel length less than 18 inches. It excludes other shotguns with barrels 18" or longer, manually operated bolt, lever and pump action firearms, single and double barreled single shot firearms and

all revolvers, as well as BB, pellet, and muzzle loading (black powder) firearms.

* * * * *

Dated: January 8, 1992.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 92-8390 Filed 4-10-92; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Exemption for Coal Extraction Incidental to Extraction of Other Minerals

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously proposed program amendment to the Kentucky permanent regulatory (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By a letter dated January 22, 1992, (Administrative Record No. KY-1107), Kentucky submitted additional information to both support and modify its proposed amendment dated June 28, 1991 (Administrative Record No. KY-1059), as it relates to Kentucky Administrative Regulations (KAR) at 405 KAR 7:015 Documents incorporated by reference; 405 KAR 7:030 Applicability; 405 KAR 7:035 Exemption for coal extraction incidental to the extraction of other minerals; 405 KAR 7:080 Small Operator Assistance; 405 KAR 8:020 Coal exploration; 405 KAR 10:200 Kentucky bond pool; 405 KAR 16:190 and 405 KAR 18:190 Backfilling and grading; 405 KAR 16:200 and 405 KAR 18:200 Revegetation; 405 KAR 16:210 and 405 KAR 18:220 Postmining land use capability; and, 405 KAR 20:010 Coal exploration. Also included in the proposed program amendment are "Kentucky Agricultural Statistics 1989-1990" and "Kentucky Agricultural Statistics 1990-1991," which are incorporated by reference. The statement of consideration of public comments received during the State's promulgation process on the proposed program amendment is also included.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on May 13, 1992. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on May 8, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 28, 1992.

ADDRESSES: Written comments and request for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-2896.

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828.

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233-2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, Federal Register (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter dated January 22, 1992, (Administrative Record No. KY-1107), Kentucky resubmitted a proposed program amendment which was part of a larger proposed program amendment originally submitted June 28, 1991 (Administrative Record No. KY-1059). This resubmission completed the State promulgation process on those proposed regulation changes to Kentucky Administrative Regulations. The changes to Kentucky Administrative Regulations (KAR) are: 405 KAR 7:015 Documents incorporated by reference; 405 KAR 7:030 Applicability; 405 KAR 7:035 Exemption for coal extraction incidental to the extraction of other minerals; 405 KAR 7:080 Small Operator Assistance; 405 KAR 8:020 Coal exploration; 405 KAR 10:200 Kentucky bond pool; 405 KAR 16:190 and 405 KAR 18:190 Backfilling and grading; 405 KAR 16:200 and 405 KAR 18:200 Revegetation; 405 KAR 16:210 and 405 KAR 18:220 Postmining land use capability; and 405 KAR 20:010 Coal exploration.

A part of this proposed program amendment, 405 KAR 7:080, was resubmitted by Kentucky on December 5, 1991, (Administrative Record No. KY-1085). That resubmittal, which deals with Kentucky's Small Operator Assistance Program, was open for public review and comment on December 31, 1991, (56 FR 67558). The public comment period closed on January 15, 1992. In addition, that portion of the current resubmittal which covers 405 KAR 7:015 and 405 KAR 7:030 is unchanged from the original submission dated June 28, 1991.

This program amendment deletes definitions from within individual regulation sections. The definitions were moved to the beginning of the specific Chapter of 405 Kentucky Administrative Regulations to which the definition relates. The reorganized definitions' sections were submitted as a separate proposed program amendment on December 31, 1991, (Administrative Record No. KY-1095) and open for public review and comment on January 30, 1992 (57 FR 3601). The public comment period closes March 2, 1992.

The proposed program amendment includes two reference manuals, the "Kentucky Agricultural Statistics 1989-1990" and "Kentucky Agricultural Statistics 1990-1991," that are incorporated by reference. Technical Reclamation Memorandum (TRM)

numbers 19 and 20 are incorporated into performance standard regulations instead of permitting regulations as originally proposed in KY-1059.

The statement of consideration of public comments received during the State's promulgation process on the proposed program amendment is also included.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky on December 5, 1991 (except for 405 KAR 7:080 on which comments were solicited separately on December 31, 1991), satisfies the applicable program approval criteria of 30 CFR 732.15. If the revised amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking as set forth in Kentucky's submission dated December 5, 1991, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on April 18, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program subsmittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 24, 1992.

Jeffery D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-8459 Filed 4-10-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Kentucky Permanent Regulatory Program; Bond Pool

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of additional information pertaining to the substantive adequacy of proposed amendments to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) established pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments pertain to laws and regulations governing Kentucky's alternative bonding program known as the Kentucky bond pool. The additional information under consideration is a recently completed actuarial analysis of the bond pool.

This notice sets forth the times and locations that the Kentucky program and the proposed amendments to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendments.

DATES: Written comments must be received by 4 p.m., EST April 28, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to William J. Kovacic at the address listed below.

Copies of the Kentucky program, the proposed amendments, documents pertaining to the adequacy of the amendments, and all written comments received in response to this notice will be available for public review at the address listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSM's Lexington Field Office: Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-2896.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233-2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. The Secretary's findings, the disposition of comments and a detailed explanation of the conditions of program approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Submission of Proposed Amendment

By letter dated September 18, 1989 (Administrative Record No. KY-916), Kentucky submitted proposed regulations to revise 405 KAR 10:200, the regulations governing the Kentucky bond pool. OSM announced receipt of the proposed amendments in the October 31, 1989, **Federal Register** (54 FR 45767), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended on November 30, 1989.

By letter dated January 19, 1990 (Administrative Record No. KY–957), Kentucky resubmitted proposed regulations to revise 405 KAR 10:200. OSM announced receipt of the revised amendment in the February 14, 1990, **Federal Register** (55 FR 5227), and in the same notice, reopened the public comment period and provided opportunity for a public hearing. The public comment period ended on March 16, 1990.

In addition to the proposed amendment described above, this rulemaking concerns two prior submissions pertaining to the Kentucky bond pool on which the Director of OSM deferred final action. In the August 10, 1990, **Federal Register** (55 FR 32618), OSM announced the deferral of action on that part of Kentucky's April 21, 1988, proposed amendment which involved Senate Bill 338. Senate Bill 338 modifies the criteria for membership in the bond pool and broadens the authority of the Bond Pool Commission to administer both the bond pool program and the abandoned mine land enhancement program. Both programs will be financed from the bond pool fund.

In the February 6, 1991, **Federal Register** (56 FR 4721), OSM announced the deferral of action on that part of Kentucky's May 8, 1990, proposed amendment which involved Senate Bill 202 and House Bill 676. These bills amend KRS 350.710 through KRS 350.750 which govern the bond pool.

The Director chose to defer action on these amendments because he wanted to take into consideration an actuarial study that was being done by the Bond Pool Commission. This actuarial study was completed on January 8, 1992, and has been entered into the Administrative Record (Administrative Record No. KY–1102). OSM requests comments on the proposed amendments given the findings and recommendations of this study.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed program amendments to provide the public an opportunity to reconsider the adequacy of the amendments in light of the January 8, 1992, actuarial study of the Kentucky bond pool. OSM is seeking comments on whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Kentucky program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Executive Order 12778

This rule has been reviewed under the principles set forth in Section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and Section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 31, 1992.

Murray T. Dougherty,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–8462 Filed 4–10–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 43 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 SMCRA). Ohio has proposed further revisions to four rules in the Ohio Administrative Code which are intended to make the rules as effective as the corresponding Federal regulations concerning design standards and requirements for road and impoundment embankments and for support facilities. Ohio has also submitted administrative record documents that provide justification for the design standards which are proposed for use in lieu of compaction testing to ensure compliance with the 1.3 minimum safety factor for certain impoundments and primary road embankments.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on May 13, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on May 8, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 28, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program

amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated November 17, 1989 (Administrative Record No. OH–1240), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio) of a number of Federal regulations promulgated between June 9, 1988, and July 30, 1989, for which OSM had determined that the corresponding Ohio rules were now less effective than the new Federal counterparts. In response to the OSM notification, Ohio submitted proposed Program Amendment Number 43 by letter dated January 16, 1990 (Administrative Record No. OH–1265). This amendment proposed revisions to seven sections of the Ohio Administrative Code (OAC).

OSM announced receipt of proposed Program Amendment Number 43 in the February 2, 1990, **Federal Register** (55 FR 3604), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on March 5, 1990. The public hearing scheduled for February 27, 1990, was not held because no one requested an opportunity to testify.

By letter dated August 17, 1990 (Ohio Administrative Record No. OH–1354), Ohio submitted Revised Program Amendment Number 43 containing two further proposed revisions to OAC Section 1501:13–9–04. These two revisions were intended to make the proposed rule as effective as the corresponding Federal regulations concerning sediment pond and impoundment spillways.

OSM announced receipt of Revised Program Amendment Number 43 in the September 6, 1990 **Federal Register** (55 FR 36661), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on October 9, 1990. The public hearing scheduled for October 1, 1990, was not held because no one requested an opportunity to testify.

On January 7, 1991, OSM sent its comments to Ohio on both Program Amendment Number 43 and Revised Program Amendment Number 43 (Ohio Administrative Record No. OH–1430). In response to OSM's letter, Ohio submitted additional proposed changes to Revised Program Amendment Number 43 on February 12, 1991 (Ohio Administrative Record No. OH–1454). In that submission, Ohio proposed further revisions to three rules and deleted previously proposed changes to one other rule. These revisions concerned termination of jurisdiction, public roadways, sedimentation pond and impoundment spillways, and certification of primary roads. Also in that submission, Ohio requested a 30-day extension of time to submit design standards which will be proposed for use in lieu of engineering tests to ensure compliance with the minimum static safety factor for certain impoundments and primary road embankments.

OSM announced receipt of Ohio's additional proposed changes to Revised Program Amendment Number 43 in the March 6, 1991 **Federal Register** (56 FR 9312), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 5, 1991. The public hearing scheduled for April 1, 1991, was not held because no one requested an opportunity to testify.

By letter dated March 14, 1991 (Ohio Administrative Record No. OH–1481), Ohio requested a 30-day extension for submittal of the design standards described above. OSM approved this extension on March 18, 1991 (Ohio Administrative Record No. OH–1483). By letter dated April 22, 1991 (Ohio Administrative Record No. OH–1511), Ohio requested a 60-day extension for submittal of the design standards. OSM approved this extension on May 1, 1991 (Ohio Administrative Record No. OH–1514).

By letter dated June 24, 1991 (Ohio Administrative Record No. OH–1538), Ohio submitted further revisions to and administrative record documents in support of Revised Program Amendment Number 43. These revisions concerned design criteria for certain road and impoundment embankments, the definition of "road," and the inclusion of public roadways within the definition of "coal mining operations."

OSM announced receipt of Ohio's additional proposed changes to Revised Program Amendment Number 43 in the July 12, 1991 **Federal Register** (56 FR 31896), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on August 12, 1991. The public hearing scheduled for August 6, 1991, was not held because no one requested an opportunity to testify.

By letter dated September 16, 1991 (Ohio Administrative Record No. OH–1583), OSM sent its comments to Ohio on the June 24, 1991, resubmission of Revised Program Amendment Number 43. By letter dated October 15, 1991 (Ohio Administrative Record No. OH–1603), Ohio requested a 90-day extension for submittal of requested design standards. OSM approved this extension on October 18, 1991 (Ohio Administrative Record No. OH–1604).

In response to OSM's September 16, 1991 letter, Ohio submitted additional proposed changes to Revised Program Amendment Number 43 of January 21, 1992 (Ohio Administrative Record No. OH–1635). In that submission, Ohio proposed further revisions to four rules and provided additional supporting documentation for its calculation of embankment design standards.

The new revisions proposed in the January 21, 1992, submission are discussed briefly below:

I. Proposed Design Standards for Certain Impoundments

OAC 1501:13–4–05 paragraph (H)(2)(c) and OAC 1501:13–4–14 paragraph (H)(2)(c): Ohio is revising paragraph (H)(2)(c) in both rules to add design standards in new paragraphs (H)(2)(c)(i) through (H)(2)(c)(vii). Permit applicants could use these standards to design non-MSHA impoundments in lieu of performing engineering tests to demonstrate compliance with the 1.3 minimum static safety factor. The new design standards cover preparation of the embankment foundation area, benching of existing steep slopes, characteristics of embankment fill material, horizontal layering of fill to facilitate compaction, moisture content of fill, maximum steepness of embankment side slopes, and minimum embankment to width.

As part of the January 21, 1992, submission, Ohio also provided Administrative Record information dated January 17, 1992, with stability analyses intended to justify the proposed impoundment design standards.

II. Proposed Design Standards for Primary Road Embankments

OAC 1501:13–4–05 paragraph (M)(2) and OAC 1501:13–4–14 paragraph (L)(2): Ohio is revising these paragraphs to add design standards in new paragraphs OAC 1501:13–4–05(M)(2)(a) through (M)(2)(i) and OAC 1501:13–4–14(L)(2)(a) through (L)(2)(i). Permit applicants could use these standards to design primary road embankments in lieu of performing engineering tests to demonstrate

compliance with the 1.3 minimum static safety factor. The new design standards cover preparation of the embankment foundation area, benching of existing steep slopes, characteristics of embankment fill material, horizontal layering of fill to facilitate compaction, moisture content of fill, maximum steepness of embankment side slopes, minimum embankment to width, and placement of culverts.

As part of the January 21, 1992, submission, Ohio also provided Administrative Record information dated January 17, 1992, with stability analyses intended to justify the proposed primary road embankment design standards.

III. Certification of Primary Roads

OAC 1501:13–10–01 paragraph (G)(1)(a): Ohio is revising this paragraph to cross-reference the other chapters of the Ohio Administrative Code which have requirements which apply to design plans and drawings for primary roads.

IV. Descriptions, Plans, and Drawings for Support Facilities

OAC 1501:13–11–02 paragraph (A): Ohio is adding this new paragraph to require that each permit applicant submit descriptions, plans and drawings, specifications, maps, and cross sections for each support facility to be constructed, used, or maintained within the proposed permit area.

V. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on April 28, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made a part of the Administrative Record.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 31, 1992.

Murray T. Dougherty,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–8463 Filed 4–10–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Ohio Revised Code

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 54 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to revise twelve sections of the Ohio Revised Code to clarify those sections of State law, to conform those sections to current State practices, and to make those sections equivalent to corresponding Federal laws. The proposed revisions concern the retention of State civil penalties, refund of permit fees, confidential information on incidental coal extraction, the Reclamation Supplemental Forfeiture Fund, the Coal Mining Performance Bond Fund, limitations on the award of costs and expenses, reclamation contracts with surface mine operators, reclamation of interim forfeiture and insolvent surety sites, use of police powers, AML reclamation liens, and the Acid Mine Drainage Abatement and Treatment Fund.

This notice sets forth the time and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on May 13, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on May 8, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 28, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday

through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated February 7, 1992 (Administrative Record No. OH–1645), as modified by letter dated February 27, 1992 (Administrative Record No. OH–1657), Ohio submitted proposed Program Amendment Number 54. The amendment proposes to revise twelve sections of the Ohio Revised Code (ORC). The proposed revisions are discussed briefly below:

1. Retention of State Civil Penalties

ORC 1513.02 paragraph (F)(3): Ohio is revising this paragraph to clarify the procedure for retention of State civil penalties assessed against a mine operator under ORC section 1513.02. The Secretary of the Ohio Reclamation Board of Review, pursuant to administrative or judicial review, would be authorized to forward the entire penalty amount or any remaining balance to the chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) for deposit in the Coal Mining Administration and Reclamation Reserve Fund created in ORC section 1513.181.

2. Refund of Permit Fees

ORC 1513.10: Ohio is repealing this existing section which currently authorizes the Ohio Department of Natural Resources, Division of Reclamation (the Division) to refund excess permit fees to the operator for acreage permitted but not subsequently affected.

ORC 1513.07 paragraph (B)(1): Ohio is revising this paragraph to revise and reinstate some of the language from ORC section 1513.10 which is to be repealed. The new language would provide that all permit fees collected by the Division shall be deposited in the State Treasury to the credit of the Coal Mining Administration and Reclamation Reserve Fund created in ORC section 1513.181.

3. Confidential Information Regarding Exemption Requests for Incidental Coal Extraction

ORC 1513.07 paragraph (D)(2): Ohio is revising this paragraph to specify that, for exemption requests for incidental coal extraction, confidential information includes and is limited to information concerning trade secrets or privileged commercial or financial information relating to the competitive rights of the persons intending to conduct the extraction of minerals.

4. Reclamation Supplemental Forfeiture Fund

Ohio is revising ORC 1513.08 paragraph (A) and is creating a new paragraph ORC 1513.18 (D) to move the current language creating the Reclamation Supplemental Forfeiture Fund from that portion of the Ohio law dealing with performance bond to that portion of the law dealing with reclamation by the Division. Ohio is also adding a new provision which would allow the Division to use funds from the Reclamation Supplemental Forfeiture Fund to reclaim areas which were affected by mining under surface mining permits issued under ORC Chapter 1514, but which the operator did not adequately reclaim.

5. Coal Mining Performance Bond Fund

ORC 1513.081: Ohio is repealing this existing section which created the Coal Mining Performance Bond Fund. Language in this section also authorized the issuance of reclamation performance bonds by the Chief using money from the fund, determined premiums and fees for participation in the fund, and provided for the release and forfeiture of reclamation performance bonds supported by the fund.

Ohio proposed to add ORC section 1513.081 to the Ohio program as part of the November 16, 1987 submission of proposed Ohio Program Amendment Number 32 (Ohio Administrative Record No. OH–0994). Ohio Program Amendment Number 32 is still in review by OSM.

ORC 1513.08 paragraph (B): Ohio is revising this paragraph to delete a reference to performance bonds issued under ORC Section 1513.081 which is to be repealed.

6. Limitations on Awards of Costs and Expenses

ORC 1513.13 paragraph (E)(1): Ohio is revising this paragraph to provide that, at the request of a prevailing party in the appeal of an enforcement order or permit issuance, the Ohio Reclamation Board of Review and/or the Chief may award necessary and reasonably incurred costs and expenses, including attorney fees, for that party's participation in the enforcement proceedings before the Ohio Reclamation Board of Review. Ohio would limit attorney fees to $75 per hour unless the Chief determines that a higher fee is justified. No fees could exceed prevailing market rates for the kind and quality of services furnished. Ohio would limit awards to prevailing parties who made a substantial contribution to a full and fair determination of the issues.

ORC 1513.13 paragraph (E)(2): Ohio is revising this paragraph to authorize the Chief to determine necessary and reasonably incurred costs and expenses for parties participating in civil actions or judicial review proceedings of enforcement orders or permit issuance.

ORC 1513.15 paragraph (F): Ohio is revising this paragraph to authorize the Chief to award necessary and reasonably incurred costs of litigation, including attorney and expert witness fees, in connection with civil actions against the Division.

ORC 1513.39 paragraph (C): Ohio is revising this paragraph to incorporate by reference the proposed limit on necessary and reasonably incurred costs and expenses specified in revised ORC section 1513.13 paragraphs (E)(1) and (E)(2) as also applying to cases of alleged discrimination against employees.

7. Reclamation Contracts With Surface Mine Operators

ORC 1513.18 paragraph (C): Under the current version of this paragraph, the Chief is authorized to enter into contracts with mine operators mining under a current, valid permit to

complete reclamation on defaulted areas. Ohio is revising this paragraph to extend the Chief's authorization to include contracts with surface mine operators mining under permits issued under ORC Chapter 1514.

8. Reclamation of Forfeited Areas Affected Under Mining Permits Issued After April 10, 1972 but Before September 1, 1981

ORC 1513.18 paragraph (I): Ohio is adding this new paragraph to authorize the Chief to use any unspent funds in the defaulted areas fund to complete reclamation of other interim forfeited areas affected under coal mining and reclamation permits issued after April 10, 1972 but before September 1, 1981.

9. Chief's Use of Police Powers on State-Funded AML Sites

ORC 1513.27 third paragraph: Ohio is adding this new paragraph to authorize the Chief to enter onto property where the owners are not known, are not readily available, or are not willing to give permission in order for the Division to use State funds to abate adverse effects of past coal mining practices on abandoned mined land (AML). Such entry onto properties shall be construed as an exercise of police power for the protection of the public health and safety and shall not be construed as an act of condemnation nor trespass.

10. AML Liens on Property of Community Improvement Corporations or Nonprofit Organizations

ORC 1513.33 third paragraph: Ohio is revising this paragraph to provide that AML liens filed by the Division against property owned by community improvement corporations or nonprofit organizations shall have priority as a lien second only to the lien of real property taxes imposed upon the land.

ORC 1513.33 fourth paragraph: Ohio is revising this paragraph to clarify the procedure to be used by county recorders in recording and indexing AML liens.

ORC 1513.33 fifth paragraph: Ohio is revising this paragraph to provide that AML liens shall continue in force so long as any portion of the lien remains unpaid.

ORC 1513.33 sixth paragraph: Ohio is revising this paragraph to delete the provision that AML liens shall be foreclosed in the same manner as State tax liens foreclosed under ORC Chapter 5721.

11. Expansion of Sites Eligible for Federally Funded AML Projects

ORC 1513.37 paragraph (C)(1): Ohio is revising this paragraph to expand the eligibility requirements for the sites of Federally funded AML reclamation projects. Ohio is adding new paragraph (C)(1)(b) to make eligible mining operations which occurred during the period beginning August 4, 1977 and ending on or before August 10, 1982 and for which sufficient reclamation funds are not available. Ohio is adding new paragraph (C)(1)(c) to make eligible mining operations which occurred during the period beginning August 4, 1977 and ending on or before October 1, 1990, for which sureties became insolvent, and for which sufficient reclamation funds are not available.

ORC 1513.37 paragraph (C)(2): Ohio is adding this new paragraph to provide that the Chief shall follow the priorities set forth at ORC 1513.37(B) in determining which sites to reclaim using the new authority granted under ORC 1513.37(C)(1) (b) and (C). The Chief shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon the local community.

12. Creation of the State Acid Mine Drainage Abatement and Treatment Fund

ORC 1513.37 paragraph (E): Ohio is adding this new paragraph to create in the State treasury the Acid Mine Drainage Abatement and Treatment Fund. The fund shall be administered by the Chief and shall consist of grants from OSM to be used in consultation with the U.S. Department of Agriculture, Soil Conservation Service to abate and treat acid mine drainage. Proposed ORC 1513.37 paragraphs (E) (1) through (7) would specify activities eligible for financial support from the fund, including the identification of affected hydrologic units, the sources of acid mine drainage, and the effects of the drainage; the identification of corrective measures to abate or treat the drainage; calculation of costs; and analysis or benefits.

13. AML Liens on Certain Properties Involved in Federally Funded AML Reclamation Projects

ORC 1513.37 paragraph (G): Ohio is revising this paragraph to provide that the Chief may file in the office of the county recorder a statement of reclamation costs spent on certain properties affected by Federally funded AML reclamation projects. Such statements would constitute a lien upon the land as of the date of the State's reclamation expenditures and would have a priority as a lien second only to the lien of real property taxes imposed upon the land.

ORC 1513.37 paragraph (G)(3): Ohio is revising this paragraph to clarify the procedure to be used by county recorders in recording and indexing AML liens relating to Federally funded reclamation.

ORC 1513.37 paragraph (G)(4): Ohio is adding this new paragraph to provide that AML liens relating to Federally funded reclamation shall continue in force so long as any portion of the lien remains unpaid. Conveyance of the land subject to an AML lien may be set aside if the lien remains unpaid at the time of conveyance.

ORC 1513.37 paragraph (G)(5): Ohio is adding this new paragraph to provide that AML liens relating to Federally funded reclamation shall be foreclosed upon the substantial failure of a landowner to pay any portion of the amount of the lien. Before proceeding with foreclosure, the Chief shall make a written demand upon the landowner for payment and shall give the landowner sixty days to pay the amount.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearings should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on April 28, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard.

Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

Executive Order 12778

This rule has been reviewed under the principles set forth in Section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 6, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-8454 Filed 4-10-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Revisions to the Ohio Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed amendments to the Ohio Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Ohio Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern the proposed policies and procedures with which Ohio would conduct the AMLR emergency program on behalf of OSM. The amendments would also make eligible for Federal AMLR funding certain sites in Ohio affected by mining activities after the passage of SMCRA.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on May 13, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on May 8, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 28, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement:

Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of SMCRA establishes an abandoned mined land reclamation (AMLR) program for the purpose of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the mining of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate state of reclamation prior to certain dates, and for which there is no continuing reclamation responsibility under State or Federal law. Title IV provides that a State with an approved AMLR Plan has the responsibility and primary authority to implement an abandoned mine land reclamation program in that State. The Secretary of the Interior approved the Ohio Plan on August 10, 1982 (47 FR 34718).

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), OSM invited States to amend their AMLR Plans for the purpose of undertaking emergency reclamation programs on behalf of OSM. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

Under the provisions of 30 CFR 884.15, any State may submit proposed amendments to its approved AMLR Plan. If the proposed amendments change the scope or major policies followed by the State in the conduct of its AMLR program, the Director must follow the procedures set out in 30 CFR 884.14 in reviewing and approving or disapproving the proposed amendments.

The proposed assumption of the AMLR emergency program on behalf of OSM is a major addition to the Ohio AMLR program. To assume the emergency program, Ohio must revise the Ohio Plan and must also revise the relevant portions of the Ohio Revised Code to give Ohio the State authority to conduct the AMLR emergency program.

By letter dated July 14, 1988 (Ohio Administrative Record No. OH-1071), Ohio submitted Program Amendment Number AML-3. This amendment proposed changes to the Ohio Plan to authorize Ohio to conduct the AMLR emergency program on behalf of OSM. OSM announced receipt of proposed Program Amendment Number AML-3 in the October 20, 1988 **Federal Register** (53 FR 41208), and, in the same notice, opened the public comment period and provided opportunity for a public

hearing on the adequacy of the proposed amendment. The public comment period ended on November 21, 1988. The public hearing scheduled for November 14, 1988 was not held because no one requested an opportunity to testify.

Because of concerns over the allocation of funds to support the AMLR emergency program, Ohio withdrew its July 14, 1988 submission of proposed Program Amendment Number AML-3 on February 15, 1989 (Ohio Administrative Record No. OH-1159). Between 1989 and 1992, OSM and Ohio continued discussions about Ohio's possible assumption of the AMLR emergency program on behalf of OSM. OSM was able to resolve Ohio's concerns about the AMLR emergency program funding; and, in early 1992, Ohio again initiated the process to assume the AMLR emergency program.

On February 7, 1992, Ohio submitted proposed Program Amendment Number 54 (Ohio Administrative Record No. OH-1645). In this amendment, Ohio proposed to revise two sections of the Ohio Revised Code (ORC). Ohio proposed to add a new paragraph ORC 1513.37 (L)(1) to authorize the Chief to enter into contracts for emergency reclamation of adverse effects of mining practices on eligible AMLR sites which constitute a danger to the public health and safety. Such contracts would not be subject to ORC section 127.16 and could be entered into by the Chief without competitive bidding for the emergency work. Ohio also proposed to add a new paragraph ORC 1513.37 (L)(2) to authorize the Chief to use police power to enter upon any land necessary to abate AML emergency situations. Such entry shall not be construed as an act of condemnation nor trespass. OSM will shortly publish a **Federal Register** notice opening the public comment period on proposed Program Amendment Number 54.

On February 19, 1992, Ohio submitted proposed Program Amendment Number AML-5. This proposed amendment contains the accompanying revisions to the Ohio Plan needed to implement the new authorities sought by Ohio through Program Amendment Number 54. OSM is reviewing proposed Program Amendment Number 54 independently of proposed Program Amendment Number AML-5, which is the subject of this proposed rule. This proposed rule beings OSM's review process on Ohio's Program Amendment Number AML-5.

II. Discussion of the Proposed Amendments

By letter dated February 19, 1992 (Administrative Record No. OH-1650), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Program Amendment Number AML-5 to the Ohio Plan. This amendment is intended to demonstrate Ohio's capability to effectively perform the AMLR emergency program on behalf of OSM. In support of the proposed amendment, Ohio also submitted responses to OSM's September 29, 1982 guidelines for State proposals to assume the emergency program (47 FR 42729).

Ohio's February 19, 1992 proposed revisions to the Ohio Plan are briefly summarized below:

1. Section 1: Summary

The proposed amendments would substitute references to Ohio staff in places where OSM actions on emergencies are described in section 1.9 and 1.10. The investigation of emergency situations would also be added to Ohio's AMLR field evaluation responsibilities listed in section 1.9.

2. Section 2: Legal Authority

Ohio is adding new AMLR eligibility criteria in section 2.3 for sites affected by mining activities after the passage of SMCRA. Inadequately reclaimed mine sites abandoned between August 3, 1977 and August 16, 1982 would be eligible for Federally funded AML reclamation. Also, inadequately reclaimed mine sites abandoned between August 3, 1977 and November 5, 1990 for which sureties became insolvent would also be eligible for Federally funded AML reclamation.

The proposed amendments would also include budgets and accounts for emergency work in the items listed in section 2.3 which make up AMLR grant applications submitted by Ohio to OSM.

3. Section 3: Description of the Proposed AMLR Program

The proposed amendments would specify in section 3.4.1 that OSM-administered emergency projects occur in States not authorized to conduct the emergency program. References to Ohio staff would also be substituted for OSM actions on Ohio emergencies discussed in section 3.4.1 and 3.4.3. Also, the time period for action on emergencies would be reduced from "3 to 6 months" to "1 to 4 weeks" in Table 3.4.3.1.

4. Section 4: Abandoned Mined Land Evaluation Program

The proposed amendments would delete reference to OSM action on emergencies in Figure 4.1.1.2. In section 4.2, OSM involvement in emergency investigations would be revised to include joint site reviews with Ohio staff. References to Ohio staff and actions would be substituted for equivalent OSM actions in Sections 4.2. OSM concurrence and approval of Ohio emergency determinations would be specified in Figure 4.2.1. Ohio emergency complaint investigation procedures would be specified in new Tables 4.2.1.1 and 4.2.1.2.

5. Section 5: Administration and Management

In section 5.1.3, responsibilities and job titles of specific Ohio staff positions in the Federal, Special Studies, and Field Operations Subsections and the Engineering Section would be revised and updated. Staff of the Federal Subsection would coordinate and monitor real estate activities at AMLR emergency sites. Special Studies staff would conduct geotechnical investigations, would coordinate and monitor maintenance activities, and would prepare environmental assessments. Field Operations staff would identify and document AMLR emergencies and would perform project officer duties. Staff of the Engineering Section would select design consultants and would prepare certain design plans and specifications for AMLR emergency projects.

Revisions in section 5.3 would allow for open-ended contracts for emergency project work. New Table 5.3.6 would specify Ohio's new contractor selection procedures for AMLR emergency projects. Ohio proposes to waive normal procedures for competitive bidding on emergency work in favor of using preapproved contractors.

6. Appendix U: Attorney General's Opinion, Emergency Program Authority

Ohio is adding new appendix U containing an opinion by the Ohio Attorney General that, under State law, Ohio has the authority to conduct the AMLR emergency program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the

final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on April 28, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

Executive Order 12778

This rule has been reviewed under the principles set forth in Section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA Section 405 and 30 CFR 884 and Section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 1992.

Annetta L. Cheek,

Acting Deputy Director, Operations and Technical Services.

[FR Doc. 92-8468 Filed 4-10-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 936

Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma permanent regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of guidelines for phase I, II, and III bond releases. The guidelines address application forms; schedules; backfilling and grading; topsoil and/or subsoil replacement; drainage control; impoundments; structures and facilities; and vegetation success standards and statistically valid sampling techniques for measuring vegetation ground cover, production, and/or stocking. The vegetation standards and techniques are applicable to the postmining land uses of pastureland; grazingland; forestry, wildlife habitat, and recreation; industrial/commercial or residential; and prime and non-prime farmland cropland. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Oklahoma program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.s.t. May 13, 1992. If requested, a public hearing on the proposed amendment will be held on May 8, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., c.s.t. on April 28, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430.

Oklahoma Department of Mines, 4040 North Lincoln, suite 107, Oklahoma City, OK 73105, Telephone: (405) 521-3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, at (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program.

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

On February 6, 1992 (Administrative Record No. OK-937), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment with the intent of satisfying OSM's required program amendment at 30 CFR 936.16(d). Oklahoma's proposed bond release guidelines are referenced by Oklahoma's rules at subsections 816.116(a)(1) and 817.116(a)(1). The bond release guidelines are written in accordance with parts 800, 816, 817, and 823 of the Oklahoma program regulations. They address application forms; schedules; backfilling and grading; topsoil and/or subsoil replacement; drainage control; impoundments; structures and facilities; and vegetation success standards and statistically valid sampling techniques for measuring vegetation ground cover, production, and/or stocking. The vegetation standards and techniques are applicable to the postmining land uses

of pastureland; grazingland; forestry, wildlife habitat, and recreation; industrial/commercial or residential; and prime and non-prime farmland cropland.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., c.s.t. on April 28, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of sections 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 25, 1992.

Allen D. Klein,

Acting Assistant Director.

[FR Doc. 92–8458 Filed 4–10–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 938

Pennsylvania Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment covers a wide variety of topics and is submitted in response to changes in Federal regulations (30 CFR chapter VII) between October 1, 1983, and August 30, 1989. Amendment provisions address four 30 CFR 732.17(e)(3) letters to the Pennsylvania Department of Environmental Resources (PADER) concerning: Historic Properties; OSM Regulatory reform Review II; Ownership and Control; and OSM Regulatory Reform Review III. In addition, other changes are proposed by the PADER.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on May 13, 1992 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on May 8, 1992. Requests to present testimony at the hearing must be received on or before 4 p.m. on April 28, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement,
Harrisburg Field Office,
Harrisburg Transportation Center,
Third Floor, suite 3C
4th and Market Streets,
Harrisburg, Pennsylvania 17101,
Telephone: (717) 782–4036.

Pennsylvania Department of Environmental Resources,
Bureau of Mining and Reclamation,
Room 209 Executive House,
2d and Chestnut Streets,
P.O. Box 2357,
Harrisburg, Pennsylvania 17105,
Telephone: (717) 787–5103.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of

comments, and a detailed explanation of the reconditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15and 938.16.

II. Discussion of Amendment

From October 1, 1983, to August 30, 1989, a number of changes were made to Federal regulators concerning surface coal mining and reclamation operations. During this time period, pursuant to Federal regulations at 30 CFR 732.17, OSM notified Pennsylvania in four separate 732 letters, listed below, that the State rules must be amended to be consistent with the revised Federal Regulations.

1. Historic Properties, June 9, 1987, Administrative Record Number, PA 651.
2. Regulatory Reform Review II, December 16, 1988, Administrative Record Number, PA 723.
3. Ownership and Control, May 11, 1989, Administrative Record Number, PA 773.
4. Regulatory Reform Review III, January 2, 1990, Administrative Record Number, PA 787.03.

By letter dated December 18, 1991 (Administrative Record Number, PA 803.00), Pennsylvania submitted to OSM a State program amendment to address the four outstanding 732 letters listed above. The proposed amendment also includes provisions necessary for Pennsylvania to implement amendments (Pub. L. 1570, Act 171 of December 12, 1986) to the Pennsylvania Surface Mining Conservation and Reclamation Act and changes to clarify existing regulations.

Nonsubstantitve changes, which are proposed throughout these rules to make grammatical corrections and to correct subsection letter notations, are not specifically discussed.

Substantive changes in the proposed amendment are discussed briefly below, approximately in the order they appear in the amendment package submitted to OSM.

1. Permit Approval Denial

Section 86.37(a)(9) Criteria for Permit Approval or Denial

Subsection (a)(9) is changed to correct a Federal regulation reference.

2. Reclamation Fee Permit Condition

Section 86.41 Conditions of Permits

Subsection (4) adds a new condition requiring continued payment of Federal reclamation fees during the permit term.

3. Areas Unsuitable for Mining

a. Section 86.101 Definitions—"Publicly Owned Park"

The section is modified to add a definition for "publicly owned part" and to alleviate any confusion between "publicly owned park" and "public park."

b. Section 86.129 Mineral Exploration and Section 86.133(f) Coal Exploration General Requirements

Section 86.129 and 86.133(f) are revised to require that coal exploration activities be approved by the PADER prior to being conducted in areas where a petition to designate an area unsuitable for mining has been received by the Department.

4. Coal Exploration

a. Section 86.132 Definitions—"Coal Exploration" and "Substantially Disturbed"

This section is changed to revise the definition of "coal exploration" to require notices of intent to explore regardless of whether substantial disturbance will occur. The definition of "substantially disturbed" is modified to clarify that drilling would no longer be considered categorically as an exploration activity which results in substantial disturbance. These changes also clarify that removing topsoil or overburden constitutes a substantial disturbance requiring compliance with certain performance standards.

b. Section 86.133 General Requirements

Subsection (a) is amended to require that a notice of intent be filed regardless of whether coal will be removed during the exploration activities and that the notice be filed at least 10 days before exploration begins.

Subsection (b)(3) is modified to require that the map, required by the notice of intent, include the location of drill holes, exploration trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of water, and pipelines.

Subsection (e) is revised to clarify that removal of 250 tons or more of coal during coal exploration requires a permit.

Subsection (g), requiring reclamation of drill holes, was revised and moved to this section from § 86.134(8).

c. Section 86.136(a) Coal Exploration and Compliance Duties

Subsection (a) is revised to be consistent with the proposed definition of "coal exploration."

5. Bond Liability Period

Section 86.151(a) Period of Liability

Subsection (a) is revised to apply only to coal surface mining bond liability. Noncoal mining is now regulated under the Noncoal Surface Mining Conservation and Reclamation Act and 25 Pa. Code Chapter 77.

6. Bonding-Anthracite Emergency Bond Loan

a. Section 86.163 Anthracite Deep Mine Operators Emergency Bond Fund

Section 86.163 is added to PADER bonding regulations to implement the Anthracite Emergency Bond Loan provisions contained in the Act of December 12, 1986, which amends the Surface Mining Conservation and Reclamation Act.

b. Section 86.165(a) Failure to Properly Maintain Bond

Subsection (a) is revised to require participating anthracite underground mine operators to make proper and timely payments to the Anthracite Deep Mine Emergency Bond Loan Fund.

7. Civil Penalty Assessments

a. Section 86.193 (e) and (f) When a Penalty Will Be Assessed

Subsection (e) and (f) and revised to clarify that any part of an acre distrubed will be treated as an acre for assessment purposes.

b. Section 89.194 System for Assessment of Penalites

In addition to grammatical changes, subsection (b)(6) is revised to clarify that the history of violations, for the purpose of assigning points, shall be determined and the points assigned only for violations on the specific permit under view. Subsection (c) is revised to clarify that each failure-to-abate cessation order shall be assessed a civil penalty of at least $750 violation per day the violation remains unabated.

c. Section 86.201 Procedures for Assessments of Civil Penalties

Subsections (a) and (c)(1) are revised to reflect grammatical changes.

8. Individual Civil Penalties

a. Section 86.195 Penalties Against Corporate Officers

Section 86.195 has added to incorporate provisions for assessing individual civil penalties against corporate officers. The section sets out the methods and procedures to assess such civil penalties.

b. Section 86.1 Definitions—"Participates

A definition of the word "participates" is added to this section to clarify those persons subject to individual civil penalties.

9. Civil Penalty Appeal Procedures

Section 86.202 Appeal Procedures

Subsection (d) is added to clarify the appeal procedures of § 86.202, which implement section 1921–A of the Administrative Code of 1929, and incorporate the doctrine of administrative finality.

10. Definition of "Affected Area"

Sections 87.1, 88.1, 89.5 and 90.1 Definitions—"Affected Area"

This section's definition of "affected area" is revised to include all lands affected by the construction of new roads or the improvement or substantial use of existing roads.

11. Surface Mine Operator License

a. Section 87.11 Definitions—"Surface Mining"

The definition of "surface mining" is revised to delete reference to noncoal mining.

b. Section 87.21 Fees

The revision makes it clear that the license fee is not refundable once PADER makes a final decision to approve or disapprove the license.

12. Protecting Historic Properties

a. Section 86.37(a)(6) Criteria for Permit Approval or Denial

Subsection (a)(6) is revised to require PADER to consider the effects of the proposed permitting action on properties listed on or eligible for listing on the National Register of Historic Places (NRHP).

b. Section 86.102 Areas Where Mining is Prohibited or Limited

Subsection (3) is revised to include those sites eligible for inclusion on the NRHP.

c. Section 86.1 Definitions—"Historic Resources"

This section is revised to include a definition of "historic resources."

d. Sections 87.42(2) 88.22(2), 88.491(a)(1)(ii), 89.38(a) and 90.11(a)(3) General Environmental Resources Information

These rules are revised to require that permit applications identify and describe the nature of cultural, historic and archaeological resources listed on or eligible for listing on the NRHP. Language is added to specify that the applicant may be required to identify and evaluate important historic and archaeological resources that may be eligible on the NRHP.

e. Sections 87.54(a)(9), 88.31(a)(9), 88.491(i)(7) and 90.21(a)(9) Maps, Cross Sections and Related Information

These subsections are revised to require that the maps and plans extend the mapping requirements for cultural or historic resources to those resources eligible for listing on the NRHP.

f. Sections 87.77 (a) & (b), 88.56 (a) & (b), 88.381(c), 88.492(f), 89.38 (b) & (c), and 90.40 (a) & (b) Protection of Public Parks and Historic Places

The revised sections require that adverse impacts of coal mining on publicly owned parks and all places listed on the NRHP must be prevented. Should the applicant have valid existing rights or receive joint agency approval from the Federal, State or local agency with jurisdiction over the park or place, adverse impacts must be minimized.

13. Ownership and Control

a. Sections 86.1 and 87.11 Definitions—"Owned or Controlled" or "Owns or Controls"

The definition for the terms "owned or controlled" or "owns or controls" is added to clarify what constitutes a relationship for regulatory purposes between a permittee or permit applicant and business associate. In addition, a definition for the term "entity" is added to § 86.1.

b. Section 86.36(c) Review of Permit Applications

Subsection (c) is revised to expand the scope of compliance reviews to those related to a permit applicant in accordance with the revised definition of "owned or controlled" or "owns or controls."

c. Section 86.37 Criteria for Permit Approval or Denial

Sections 86.37(a) (8) and (11) are being revised in accordance with the new definition of "owned or controlled" or "owns or controls" in § 86.1.

Both subsections (a) (8) and (11) are also being revised to require that a permit be issued conditionally if a violation identified as part of the permit review process is being corrected or pending the outcome of an appropriate appeal.

Subsection (a)(10) is revised to apply the prohibition on permit issuance to an applicant or operator specified in the application and those who are related to the applicant through ownership or control as defined in § 86.1 if such persons have demonstrated a pattern of willful violations.

Subsection (c) is added and requires PADER to reconsider its decision to approve a permit application based on the compliance review and any new information submitted in accordance with new requirements of §§ 86.62(d) and 86.63(c).

d. Section 86.1 Definition—"Related Party"

This section is revised to add a definition for the term, "related party."

e. Section 86.52(c)(4) Permit Revisions

Subsection (c)(4) is being added to require the applicant for a permit revision to update information related to identification of interest (§ 86.62) and compliance information (§ 86.63).

f. Section 86.55 Permit Renewals: General Requirements

In addition to grammatical changes, subsection (d) is being revised to require that applications for permit renewal be subject to the expended ownership and control requirements of §§ 86.62 and 86.63.

g. Section 86.62 Identification of Interests

Subsection (a) is rewritten and revised to require that each application contain information pertaining to the person that will pay the reclamation fees in addition to the applicant and the applicant's resident agent. The revision also requires that he permit application include these persons' employer identification numbers and requests voluntary submittal of their social security numbers.

Subsection (a)(2) is revised to clarify the information requirements for "owners of records" required to be listed on the permit application.

Subsection (b) is revised to apply the applicant information requirements to each person who owns or controls the applicant, as that term is defined in § 86.1.

Subsection (c) is added to require that, for any coal mining operation owned or controlled by either the applicant or any person who owns or controls the applicant, the permit application must include specific information including operation name, address, identifying numbers (including the employer identification number, Federal or State permit number and Mine Safety and Health Administration (MSHA) number), the date of issuance

of the MSHA number, and the same of the regulatory authority.

Subsection (d) is added and requires the applicant to submit information to update, correct, or indicate that no change has occurred in the ownership and control or applicant identification information after the applicant is notified that the application is approved but before the permit is issued.

h. Section 86.63 Compliance Information

Subsection (a)(1) has been revised to require the application to include information on persons owned or controlled by the applicant or who own or control the applicant in the statement of whether such persons had a mining permit suspended or revoked or forfeited a mining bond.

Subsection (a)(2) is revised to include the requirement that an application shall contain the MSHA number and date of issuance.

Subsection (a)(3) is revised to add language requiring each permit application to include a list of all its unabated air or water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by the applicant or by any person who owns or controls the applicant. In addition, the list of information required for each violation notice or cessation order has been expanded.

Subsection (c) is added and requires the applicant to submit information to update, correct, or indicate that no change has occurred in the ownership and control or applicant identification information after the applicant is notified that the application is approved but before the permit is issued.

i. Section 86.212 Federal Minimum Enforcement Actions

In addition to nonsubstantive grammatical changes, subsection (c) is added to require a permittee, within 30 days of being issued a cessation order, to notify PADER of any changes in the ownership and control information that have occurred since submittal of the application or since submittal of the last update of this information.

Subsection (d) is added to require, within 60 days of the issuance of a cessation order, PADER to notify all owners and controllers identified under §§ 86.62 and 86.212(c) that a cessation order was issued and that the person was identified as an owner or controller responsible for correction of the violation.

j. Section 86.53 Reporting of New Information

Section 86.53 is revised to require the applicant to provide annually, ownership and control information required by §§ 86.62 (b) and (c).

k. Section 87.14 Identification of Ownership

Section 87.14 is rewritten to allow PADER to use the existing surface mine license program to conduct annual reviews of the ownership and control information.

14. Permit Rescission

a. Section 86.43 Improvidently Issued Permits

This section is added to provide criteria for determining when a permit has been improvidently issued. The section also requires PADER to review a permit whenever it has reason to believe that the permit has been improvidently issued and to take certain remedial measures if it determines that it has been so issued.

b. Section 86.44 Rescission of Improvidently Issued Permits

Section 86.44 is added to specify the procedures to be followed to rescind improvidently issued permits.

15. Revegetation

a. Section 86.151 Period of Liability

Subsection (d) is revised to clarify the extent of husbandry practices allowed without extending the bond liabiity period.

Subsection (h) is revised to clarify that implementation of an alternative postmining land use approved under these sections, which is beyond the control of the permittee, need not be covered by the board.

b. Sections 87.151(d), 89.86(e)(2)(ii)(C) and 90.155(d) Revegetation: Species

These subsections are revised to require that the configuration and the species composition of the cover types shall be established in accordance with guidelines established by the Pennsylvania Fish Commission and the Pennsylvania Game Commission.

b. Sections 87.155(a), (b)(5),& (c), 89.86(e)(1) & (e)(3), & 90.159(a) & (c) Revegetation: Standards for Successful Revegetation)

The language is revised to require that areas developed as pastureland meet production standards in addition to current ground cover standards.

Subsection 87.155(b)(5) is revised to require that trees and shrubs counted in determining revegetation success be healthy and in place for not less than two growing seasons.

16. Siltation Structure and Impoundments

Sections 87.112(c), 89.111(c) & 90.112(c) Hydrologic Balance: Dams, Ponds, Embankments and Impoundments—Design, Construction and Maintenance

These subsections are revised to clarify that all strucutures located where failure could cause loss of life or serious property damage, regardless of size, are subject to the regulatory standards for large impoundments.

In addition, language is added to require a foundation investigation, as well as any laboratory testing of foundation material, to determine the design requirements for foundation stability for such impounding structures.

17. Roads and Support Facilities

a. Sections 87.1, 88.1 and 90.1 Definitions—"Haul Road" and "Access Road"

The definitions of "haul road" and "access road" are revised to include the reconstruction or improvement of existing roads. The definition of "haul road" has also been revised to include roads, including public roads, substantially used as an integral part of coal mining operations.

b. Sections 87.54(a)(22), 88.31(a)(22), and 90.21(a)(24) Maps, Cross Sections, and Related Information

These subsections are revised to require that the permit application include plans and drawings containing certain specific information for each road to be constructed, used, or maintained within the proposed permit area.

c. Sections 87.160, 89.26, and 90.134 Roads

Sections 87.160(a), 89.26(e)(1) and 90.134(a) are beng revised to require that the design and construction or reconstruction of roads ensure environmental protection for their planned duration and use.

Sections 87.160(b) and 90.134(b) are being revised to include access roads wth haul roads in the regulations prohibiting their placement within 100 feet of a perennial or intermittent stream. Section 89.26(f)(2) is being revised to clarify that exceptions to this prohibition must be made in accordance with § 86.102.

Sections 87.160(c), 89.26(e)(3) and 90.134(c) are being revised to require that roads be designed and constructed with a drainage system able to safely

pass the peak flow from a 10-year, 24-hour precipitation event.

Sections 87.160(g), 89.26(b), and 90.134(g) are being revised to require that haul roads be constructed and surfaced with sufficiently durable, nontoxic-forming material.

Sections 87.160(h), 89.26(g)(3), and 90.134(h) are added to require roads damaged by a catastrophic event be repaired or reclaimed as soon as practicable after the damage has occurred.

Sections 87.160(i), 89.26(e)(3), and 90.134(i) are revised to require certification by a registered professional engineer or qualified registered professional land surveyor that the roads have been constructed or reconstructed as designed in accordance with the approved plan.

Section 89.26(a) is revised to delete the word "nonpublic" to clarify that all roads (nonpublic and public) used to facilitate coal exploration or underground mining activities are now subject to all regulations previously restricted to nonpublic roads. Additionally, the subsection was modified to rescind the exemption for pioneer or construction roadways.

d. Section 86.134(3)(ii)(c) and (12) Coal Exploration Performance and Design Standards

Subsection (3)(ii)(c) is revised to require that any existing roads significantly altered in conjunction with coal exploration activities, including roads to remain as permanent roads, comply with the roads performance standards of §§ 87.160 and 87.166. In addition, subsection (12) is added to require exploration and related reclamation activities be conducted to avoid damage to known historic resources.

e. Sections 87.166 and 90.140 Haul Roads and Access Roads: General

Both sections are being revised to include specific reclamation measures which must be taken immediately after a road is no longer needed for associated surface mining activities.

f. Section 89.90(b) Restoration of Roads

Subsection (b) is revised to clarify that the removal and disposal of road-surfacing materials is mandatory in all cases where they are incompatible with the postmining land use or the revegetation plan.

18. Anthracite Mining/Backfilling and Grading

a. Section 88.1 Definitions—"Bottom Rock," "Highwall," "Contour Mining," "Modified Block-Cut Mining" and "Open Pit Mining"

The definitions of "bottom rock" and "highwall" are revised to clarify their meaning as used to describe the complex geologic settings in the anthracite region. The definitions of "contour mining," "modified block-cut mining" and "open pit mining" are added to clarify the use of terms in chapter 88.

b. Section 88.115(c) Backfilling and Grading: General Requirements

Subsection (c) is revised to add the new term "modified block-cut mining" and to make it clear that no more than 1,500 linear feet of open pit may be open at any time.

c. Section 88.116 (4) and (5) Backfilling and Grading: Reaffecting Previously Mined-Lands

Subsections (4) and (5) are being revised to include bottom rock to modify the term "highwall" as used in this section.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Pennsylvania satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing schould contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on April 28, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons shceduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made part of the Administrative Record.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of Executive Order 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 24, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–8460 Filed 4–10–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 948

West Virginia Abandoned Mine Land Program; Expanded Eligibility Criteria, Acid Mine Drainage Treatment and Abatement Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the West Virginia Abandoned Mine Land Reclamation Plan (hereinafter referred to as the West Virginia AMLR plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment contains revisions to the State's Abandoned Mine Lands and Reclamation Act and its approved State Reclamation Plan. The purpose of this amendment is to expand the eligibility requirements to include certain sites abandoned after August 3, 1977, to establish procedures for conducting watershed based acid mine drainage abatement projects, and to create two new accounts in the State Treasury for conducting reclamation.

This notice sets forth the times and locations that the West Virginia AMLR plan and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on May 13, 1992. If requested, a public hearing on the proposed amendment will be held on May 8, 1992. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on April 28, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: West Virginia AMLR Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the proposed amendment, the West Virginia AMLR plan, and the administrative record on the West Virginia AMLR plan are available for public review and copying at the OSM office and the office of the State regulatory authority listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

West Virginia Division of Environmental Protection, 1615 Washington Street, East, Charleston, West Virginia 25311, Telephone: (304) 348-3500.

In addition, copies of the proposed amendment are available for public inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, room 229, Morgantown, West Virginia 26505, Telephone: (304) 291-4004.

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, suite 3, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

Each requester may receive one free copy of the proposed amendment by contacting the OSM Charleston Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301; Telephone (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the West Virginia AMLR plan on February 23, 1981. Information pertinent to the general background, revisions, and amendments to the initial submission, as well as the Secretary's findings and the disposition of comments can be found in the January 23, 1981, **Federal Register** (48 FR 7324-7327). Subsequent actions taken with regard to the West Virginia AMLR plan can be found in 30 CFR 948.20 and 948.25.

The Secretary has adopted regulations that specify the content requirements of a state reclamation plan and the criteria for plan approval (30 CFR part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to an approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Discussion of Amendment

By letter dated October 25, 1991, West Virginia submitted an amendment to its AMLR plan. The amendment consists of new narratives to be added to the approved West Virginia AMLR plan as provided for by 30 CFR 884.13.

Specifically, the following areas of the plan are being revised:

(1) Interim Program Sites: West Virginia proposes to update certain portions of its AMLR plan to reflect changes that have occurred in SMCRA (402(g)(4)(B)). Sites abandoned after August 4, 1977, are eligible for reclamation in the following instances: (a) Sites abandoned between August 4, 1977, and January 21, 1981, are eligible (January 21, 1981, is the date that West Virginia gained primacy over its permanent Surface Mining Reclamation Program). These sites, known as "interim program sites" may be reclaimed by West Virginia's AMLR Program if they are either Priority One or Two as outlined in part A, chapter III, subsection B (Page 9) of this Plan, and bonds, other forms of financial guarantees, or any other sources of funding are not sufficient to provide for adequate reclamation or abatement; and (b) abandoned mine sites are also eligible if abandoned between August 4, 1977, and November 5, 1990, where the surety of the mining operator became insolvent during such period, and funds immediately available from proceedings relating to such insolvency, or from any finanical guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site. These sites must qualify as Priority One or Two sites as outlined in the plan.

(2) Acid Mine Drainage Abatement: West Virginia proposes to modify its plan to reflect changes that have occurred in SMCRA (402(g)(7)(A)), and expend up to 10 percent of all AMLR funds received annually to address acid mine drainage problems on a hydrologic unit basis. The hydrologic units must be significantly affected by acid mine drainage from coal mining practices in a manner which adversely impacts biological resources. The impacts must be created by acid mine drainage from mines which are eligible for reclamation with (a) AMLR money and (b) bond forfeiture funds or other State funding sources. Plans for reclaiming hydrologic units will be developed in consultation with the Soil Conservation Service and reviewed by the Bureau of Mines.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is announcing a comment period on West Virginia's program amendment to provide the public an opportunity to consider their adequacy. Specifically, OSM is seeking comments on the amendment to the State's AMLR plan that was submitted on October 25, 1991. If approved, the amendment will become part of the West Virginia AMLR plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on April 28, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record

Executive Order 12778

This rule has been reviewed under the principles set forth in Section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI as determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining, Abandoned mine land reclamation.

Dated: January 24, 1992.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 92–8457 Filed 4–10–92; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME-4-1-5357;A-1-FRL-4120-3]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Gasoline Tank Truck Tightness Self-Certification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision was submitted in response to requirements of the Clean Air Act Amendments of 1990 (CAAA). The revision consist of a regulation which limits emissions of volatile organic compounds (VOC) entitled "Gasoline Tank Truck Tightness Self-Certification." This action is being taken under Section 110 and Part D of the Clean Air Act.

DATES: Comments must be received on or before May 13, 1992. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Managment Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, (617) 565–3166; FTS 835–3166.

SUPPLEMENTARY INFORMATION: On June 5, 1991, EPA received a formal SIP submittal from the Maine Department of Environmental Protection (DEP) containing chapter 120 entitled "Gasoline Tank Truck Tightness Self-Certification." This regulation was submitted in response to the CAAA requirement that volatile organic compound (VOC) reasonably available control technology (RACT) be adopted for all control technique guideline (CTG) categories by November 15, 1992 [Sections 182(b)(2)(B) and 184 (b)(1)(B)].

Background

Pursuant to the November 15, 1990 enactment of the Clean Air Act Amendments of 1990, EPA sent the Maine DEP a letter on January 23, 1991 describing several specific State actions needed to implement the nonattainment provisions of title I. This letter noted that the CAAA require that Maine submit a SIP revision which requires the implementation of RACT with respect to all sources of VOC in Maine covered by CTG issued before the date of enactment of the CAAA of 1990. Maine was previously designated as rural nonattainment area and, therefore, was required to adopt regulations pursuant to the Group I and Group II CTGs for major sources (i.e., with a potential to emit more than 100 tons per year). Pursuant to the May 25, 1988 SIP Call and the RACT "fix-up" requirement, section 182(a)(2)(A), of the Amended Act, Maine previously submitted regulations for bulk gasoline terminals, fixed roof petroleum tanks, and paper coating sources. These submissions corrected deficiencies in existing rules or rules that Maine was required to adopt under the pre-amended Act. Now, under sections 182(b)(2)(B) and 184(b)(1)(B), Maine for the remaining CTG categories and submit them to EPA by November 15, 1992.

Maine's Revision

In response to this requirement, on June 5, 1991 Maine DEP submitted Chapter 120 entitled "Gasoline Tank Truck Tightness Self-Certification" as a SIP revision. This regulation is briefly summarized below.

CHAPTER 120—GASOLINE TANK TRUCK TIGHTNESS SELF-CERTIFICATION

This regulation requires that all tank trucks that transport gasoline with a true vapor pressure of greater than 1.5 psi at 60 °F or a Reid Vapor Pressure of 4 psi (27 kilopascals) and receive gasoline from a bulk gasoline terminal subject to Chapter 112 of the Department's regulations be maintained leak-tight and must be tested and certified annually.

EPA has evaluated this revision and has found that it is generally consistent with EPA model regulations and the following EPA guidance documents: "Leaks from Gasoline Tank Trucks and Vapor Collection System," (EPA–450/2–78–051) and "Guidance to State and Local Agencies in Preparing Regulations to Control Volatile Organic Compounds from Ten Stationary Source Categories," (EPA–450/2–79–004). As such, EPA believes that the submitted rule generally constitutes RACT for the applicable sources. However, as noted below, amendments must be made in order for EPA to grant approval of the rule.

Maine's regulation and EPA's evaluation are detailed in a memorandum, dated October 9, 1991, entitled "Technical Support Document—Maine—Gasoline Tank Truck Tightness Self-Certification." Copies of that document are available, upon request, from the EIPA Regional Office listed in the **ADDRESSES** section of this notice.

Amendments Necessary Prior to Final Rulemaking

There are four outstanding issues associated with this SIP revision. Prior to final approval, the Maine DEP must make the following amendments outlined below in paragraphs (1), (2), and (3).

(1) The defined term "vapor control system" is not used consistently throughout chapter 120. Chapter 120(3)(B) uses the alternative term "vapor recovery system," which is not defined. The State should either change this term to "vapor control system" or define the term "vapor recovery system."

(2) Chapter 120 (3)(A)(2) states that DEP initials must be stenciled on the truck, the truck must display the date that the tightness test was conducted, that the certification test approval expires June 1 of the year following the test. In some cases, the June 1 expiration date will allow trucks to go longer than 12 months without a test. This is inconsistent with Maine's chapter 112(3)(A) which requires the truck to have been certified within the last 12 months. It is also inconsistent with chapter 120(4)(b) which requires a certified tank truck to remain leak-tight for the 12 months following the certification test. Therefore, Maine must either amend chapter 120(3)(A)(2) to read "expires 12 months after the certification test," or amend the above referenced sections which are now inconsistent with the June 1 expiration date.

(3) Also, chapter 120(5) requires that the Department be informed at least 24 hours in advance of each certification test. EPA believes that this period is insufficient to ensure that the DEP will have the opportunity to monitor the test. Therefore, the DEP should require earlier notification of the intent to test. EPA's model regulation contains the requirement that the Department be notified in writing at least 10 days before the test. Maine's regulation should contain similar language.

(4) In addition, in the future, when Maine adopts a bulk gasoline plant regulation (the CAAA require that this be submitted to EPA by November 15, 1992), chapter 120 must also be amended to apply to trucks that exclusively service bulk plants. At that time, a bulk gasoline plant definition will have to be added and certain changes will have to be made to Chapter 120.

EPA is proposing to approve this Maine SIP revision provided that Maine makes the changes described in paragraph numbers (1), (2), and (3) of this notice, and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the Addresses section of this notice.

Proposed Action

EPA is proposing to approve chapter 120, "Gasoline Tank Truck Tightness Self-Certification", on the condition that the Maine DEP make the amendments outlined in this notice prior to final approval.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 1 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of Section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: November 13, 1991.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 92–7742 Filed 4–10–92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 92–9; DA 92–398]

Redevelopment of Spectrum to Encourage Innovation in the use of new Telecommunications Technologies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extending time for comments.

SUMMARY: The Commission's Chief Engineer granted a 45 day extension for filing comments and reply comments to the Notice of Proposed Rule Making (57 FR 5993, February 19, 1992) concerning redevelopment of spectrum to encourage innovation in the use of new telecommunications technologies. This responds to a request from the American Petroleum Institute and other current 2 GHz microwave users. The additional time will ensure a comprehensive and thorough examination of the complex issues raised in the document.

DATES: Comments are due by June 5, 1992. Reply comments are due by July 6, 1992.

ADDRESSES: Federal Communications Commission, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fred Lee Thomas, Office of Engineering and Technology, Frequency Allocation Branch, (202) 653–6204.

SUPPLEMENTARY INFORMATION:

Order Extending Time For Comments and Reply Comments

Adopted: March 31, 1992; Released April 1, 1992.

Comment Date: June 5, 1992.

Reply Comment Date: July 6, 1992.

By the Office of Engineering and Technology:

1. On March 16, 1992, the American Petroleum Institute (API), joined by the Utilities Telecommunications Council (UTC), the Association of American Railroads (AAR), and the Larger Public Power Council (LPPC), filed a Motion for Extension of Time (Motion) requesting that the time for filing comments and reply comments to the Commission's Notice of Proposed Rule Making (Notice) in the above captioned proceeding be extended two months to June 22, 1992, and July 21, 1992, respectively.

2. API states that this extension is warranted for the following reasons: (1) it has encountered delay in obtaining the Commission data bases from the National Technical Information Service (the Commission's data service contractor) needed to fully review the spectrum study performed by the Commission's Office of Engineering and Technology; (2) it needs additional time to fully analyze the impact on existing fixed microwave operations of the proposals made in the Notice; (3) it needs more time to analyze adequately the Final Acts of the World Administrative Radio Conference, 1992, which adjourned on March 3, 1992; and, (4) it needs more time needed to review adequately the voluminous comments filed in other Commission proceedings that are relevant to this proceeding.[1]

3. Oppositions to API's Motion were filed by Time Warner Telecommunications Inc. (TWT) and Cox Enterprises, Inc. (Cox). TWT argues that the requirement for spectrum to satisfy the needs of emerging technologies is long-standing and urgent, and that a delay in this proceeding would not serve the public interest because it would delay initiation of new services to the public and harm efforts by U.S. entities to compete in the global marketplace. Cox argues that the Commission has provided an adequate amount of time for interested parties to comment on the Notice and that it is not in the public interest to delay this proceeding because of the adverse impact delay would have in the health and growth of the national economy.

4. The Commission does not routinely grant extensions of time.[2] However, due to the complexity of the issues and the apparent difficulty encountered by API in obtaining relevant data, we believe that in this instance a limited extension of time is warranted. Additional time will serve the public interest in ensuring a comprehensive and thorough examination of the complex issues raised by the proposals made in the Notice and their relationship to other pending proceedings, and not appreciably delay Commission consideration of this proceeding. An additional forty-five days will provide adequate time for interested parties to obtain and analyze relevant information and file comments. Accordingly, it is ordered that the deadline for filing comments and reply comments is extended to June 5,1992, and July 6, 1992, respectively.

5. This action is taken pursuant to authority found in section 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r) and pursuant to section 0.31, 0.241, and 1.46 of the Commission's Rules, 47 CFR 0.31, 0.241, and 1.46.

6. For further information concerning this rule making contact Mr. Fred Lee Thomas, Office of Engineering and Technology, (202) 653-6204.

Federal Communications Commission.

Bruce A. Franca,

Acting Chief Engineer.

[FR Doc. 92-8343 Filed 4-10-92; 8:45 am]

BILLING CODE 6712-01-M

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[1] See Notice of Inquiry, GEN Docket No. 90-314, 5 FCC RCD 3995 (1990); see also Policy Statement and Order, GEN Docket No. 90-314, 6 FCC Rcd 6601 (1991).

[2] 47 CFR 1.46.

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47 CFR Part 73

[MM Docket No. 92-65, RM-7938]

Radio Broadcasting Services; Gladwin, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition filed by Michigan Radio Group, Inc., proposing the deletion of vacant Channel 280A at Gladwin, Michigan, to allow Station WMZX(FM), Channel 280A, Owosso, Michigan, to operate as a six kilowatt facility. In the alternative, petitioner has proposed to retain Channel 280A at Gladwin at a site 10.5 kilometers (6.5 miles) west of the community. The site restriction will allow Channel 280A in both communities to be used as a six kilowatt facility. Canadian concurrence has been obtained for Channel 280A at Gladwin at coordinates 44-00-47 and 84-36-47. A filing window will be opened if Channel 280A is retained in Gladwin at the restricted site.

DATES: Comments must be filed on or before May 29, 1992, and reply comments on or before June 15, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Howard J. Barr, Pepper & Corazzini, 200 Montgomery Building, 1776 K Street NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-65, adopted March 24, 1992, and released April 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-8486 Filed 4-10-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-67, RM-7945]

Radio Broadcasting Services; McRae and Nashville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on petition by Tifton Radio Partnership proposing the substitution of Channel 237C3 for Channel 237A at Nashville, Georgia, and modification of its license for Station WJYF(FM) to specify the higher powered channel, and the substitution of Channel 274A for Channel 237A at McRae, Georgia, and the modification of Station WDAX's license to specify the alternate Class A channel. Channel 237C3 can be allotted to Nashville in compliance with the Commission's minimum distance separation requirements at its current licensed site. The coordinates are North Latitude 31-10-18 and West Longitude

83–21–57. Channel 274A can be allotted to McRae in compliance with the Commission's minimum distance separation requirements with a site restriction 1.3 kilometers (0.8 miles) east, in order to avoid a short-spacing to Station WBGA(FM), Channel 273C1, Waycross, Georgia, and a proposal to allot Channel 273C1 to Brunswick, Georgia. The coordinates are North Latitude 32–04–19 and West Longitude 92–52–43.

DATES: Comments must be filed on or before May 29, 1992, and reply comments on or before June 15, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Smithwick & Belendiunk, P.C., 2033 M Street, NW., suite 207, Washington, DC 20036 (Attorney for Tifton Radio Partnership).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–67, adopted March 24, 1992, and released April 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor's, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should not that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which invole channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–8488 Filed 4–10–92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-66, RM-7940]

Radio Broadcasting Services; Sun City, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Resource Media, Inc., licensee of Station KNOC-FM, Channel 292A, Sun City, Arizona, seeking the substitution of Channel 292C2 for Channel 292A and modification of its license accordingly to specify operation on the higher powered channel. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 292C2 at Sun City or require the petitioner to demonstrate the availability of an additional equivalent class channel. However, petitioner is requested to provide additional engineering information to support its proposal. Also, since Sun City is located within 320 kilometers of the Mexican border, international coordination of this proposal with Mexico is required, pursuant to the terms of the United States-Mexican FM Broadcasting Agreement of 1972, 24 UST 1815, TIAS No. 7697. Coordinates for this proposal are 33–58–30 and 112–20–08.

DATES: Comments must be filed on or before May 29, 1992, and reply comments on or before June 15, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Thomas J. Hutton and Nancy L. Wolf, Esqs., Dow, Lohnes and Albertson, 1255–23rd Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–66, adopted March 24, 1992, and released April 8, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–8487 Filed 4–10–92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 88-07, Notice 5]

RIN 2127-AD73

Anthropomorphic Test Dummy; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking, reopening of comment period.

SUMMARY: This notice reopens the comment period on an advance notice of proposed rulemaking (ANPRM) concerning possible specification of alternative test dummies in Standard

No. 214, Side Impact Protection. The agency is taking this action in response to a petition from General Motors which requested additional time to submit comments. The agency is reopening the comment period for 30 days.

DATES: Comments on Docket 88–07, Notice 4, must be received by May 13, 1992.

ADDRESSES: Comments should refer to Docket 88–07, Notice 4, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Backaitis, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington DC 20590 (202–366–4912).

SUPPLEMENTARY INFORMATION: In October 1990, NHTSA amended standard No. 214, Side Impact Protection, to add procedures and performance requirements for a new dynamic test. In the test, a passenger car must provide protection to the thoracic and pelvic regions of a specified side impact dummy (SID) in a full-scale crash test. NHTSA indicated at the time of the side impact final rule that if ongoing studies demonstrated that two alternative dummies, BioSID and/or EuroSID, compared satisfactorily to SID, it would consider proposing those dummies as alternative devices in the future. The agency issued the ANPRM to request comments on the desirability and need for specifying alternative dummies in Standard No. 214, and to obtain relevant technical data which could be used to support development of a possible NPRM. A 75-day comment period was provided, which closed on March 12, 1992.

NHTSA received two requests to extend the comment period by one month. The first request was submitted in early February 1992 by the Association des Constructeurs Europeens d'Automobiles (ACEA), a grouping of 14 European automobile manufacturers. That organization stated that due to high amount of work linked to preparation of a synopsis of its studies on the evaluation of EuroSID, BioSID and SID, it would be difficult to meet the March 12, 1992 deadline.

Based on its review of ACEA's submission, including the fact that organization had not indicated why the 75-day comment period was insuffficient for preparing the synopsis of relevant studies, NHTSA declined to grant ACEA's request. In notifying ACEA of its decision, the agency emphasized, however, that, as stated in the ANPRM, it is the policy of the agency to consider late comments to the extent possible. NHTSA advised ACEA that, for this particular rulemaking, it was a reasonable expectation that a one-month late comment, such as contemplated by that organization, would arrive in time to receive consideration. The agency encouraged ACEA to send in as complete a comment as possible within the comment period and follow with a late comment, if necessary.

Subsequent to the time NHTSA sent its response to ACEA, General Motors (GM) requested a one-month extension of the comment period. GM stated that, since the final rule for the dynamic side impact test was issued in October 1990, it has had to devote most its resources associated with side impact in the development of vehicles to meet the requirements using the specified SID dummy. That company stated that consequently, there has been limited opportunity to complete and compile statistical studies of all existing data which could be used to compare BioSID and SID. GM indicated that it would like to be able to include in its comments the results of those studies in their entirety, but is unable to do so in the allotted timeframe.

GM also stated that its difficulty in completing comments on the ANPRM has been exacerbated by the need to prepare comments for a recent notice of proposed rulemaking (NPRM) concerning clarification of how Standard No. 214's quasi-static door strength test procedure is to be conducted in the case of several types of vehicles. The comment period for that NPRM, which was published on January 15, 1992 (57 FR 1716), closed on March 16, 1992.

GM stated that while NHTSA may not have anticipated that manufacturers would have extensive comments on the January 1992 NPRM, that company has determined that the proposed amendments would have a significant impact on the development of its light trucks, multipurpose passenger vehicles and buses (collectively referred to as "LTV's") to meet Standard No. 214 and on passenger cars that currently comply with the standard. (Standard No. 214's quasi-static side door strength requirements were extended to LTV's in a final rule published in Federal Register (56 FR 27427) on June 14, 1991.) GM stated that preparation of its comments on the January 1992 NPRM has necessitated an extensive analysis to determine how the proposal would affect all of that company's products, thereby diverting some of the resources needed to complete its comments on the alternative dummy ANPRM.

After consideration of GM's petition, NHTSA has decided to reopen the comment period for 30 days. While the agency initially believed that a 75-day comment period was sufficient, it understands that manufacturers have limited resources in particular areas such as side impact protection and that preparation of extensive comments on the January 1992 NPRM limited GM's ability to simultaneously prepare comments on the alternative dummy ANPRM. NHTSA further believes that the results of the statistical studies cited by GM would provide useful information which the agency should have the opportunity to consider as part of this rulemaking.

Issued on: April 7, 1992.

Barry Felrice,

Associate Adminstrator for Rulemaking.

[FR Doc. 92–8387 Filed 4–10–92; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 57, No. 71
Monday, April 13, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Warner Creek Fire Recovery Project, Willamette National Forest, Lane County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to conduct various resource recovery projects including reforestation, salvage of fire-killed trees, riparian planting, trail reconstruction, various wildlife habitat improvement projects, fuels reduction, research, and road closures within the approximately 9000 acre Warner Creek fire area. This area was burned during the October 1991 fire. Within the fire area, approximately 3800 acres were totally killed, an estimated 2300 acres were partially killed, about 2500 acres were underburned, and about 400 acres were unburned by the fire. The Warner document will tier to the Willamette National Forest Land and Resource Management Plan (Forest Plan) and to the final EIS for spotted owl habitat management, recently prepared by the Forest Service. The Warner Creek Fire occurred about ten air miles east of Oakridge, Oregon.

DATES: Comments concerning the scope of the analysis should be received in writing by May 1, 1992.

ADDRESSES: Send written comments to David Hausam, Public Affairs Officer, Oakridge Ranger Station, 46375 Highway 58, Westfir, Oregon 97492.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed actions and environmental impact statement to Terri Jones, Project Leader, phone no. (503) 782–2291.

SUPPLEMENTARY INFORMATION: The resource recovery project will propose the following actions: Reforestation, salvage of fire-killed trees, slope and stream stabilization, fish habitat improvements, riparian planting, trail reconstruction, various wildlife habitat improvement projects, fuels reduction, and road closures.

Salvage of fire-killed trees may occur on some portion of the fire affected area at an intensity yet to be determined. Activities selected for implementation would be implemented during fiscal years 1992 through 1995.

The EIS will document decisions on which, if any, of the above proposed projects will be implemented within the 9000 acres burned during the Warner Creek fire. The proposed projects are all located on the Oakridge Ranger District in the Salt Creek, Kelsey Creek, Eagle Creek, and Black Creek drainages, centered on Bunchgrass ridge. The fire area is located approximately 10 miles east of the City of Oakridge, Oregon and approximately 50 miles southeast of Eugene, Oregon.

The Warner E.I.S. will develop a range of management alternatives for fire recovery in the Warner Creek fire area. All of the area affected by the Warner Creek fire is within a Northern Spotted Owl Habitat Conservation Area (HCA 0–10) as designated by the Final Environmental Impact Statement on Management of the Northern Spotted Owl in the National Forests, recently approved. In addition, the Warner Recovery Plan and all proposed activities will be in compliance with the same. The Warner Project Plan will follow standards and guidelines contained in the Willamette National Forest Land and Resource Management Plan and may modify a limited number of these standards and guidelines which are pertinent to or necessary for fire recovery activities in the fire affected portion of HCA 0–10.

The scoping process for this analysis began with a public information meeting held on November 16, 1991, where preliminary issues were collected. Future public meetings have yet to be scheduled, but several others are planned during the scoping process, which is ongoing. These meetings, once scheduled, will be held in Eugene, Oakridge, and Westfir, Oregon. Scoping input is welcome and can be made in writing to the previously mentioned address.

The following significant issues have been identified:

1. Soils and Long-term Site Productivity

Removal of fire killed trees may affect soil organic material sources. Removal may also affect material which stabilizes surface erosion. Long term soil moisture and nutrient reservoirs could be reduced.

2. Owls and Owl Habitat

Removal of trees from stands with 100% tree mortality may affect quality of future owl foraging habitat. Removal of dead trees in areas of partial mortality may affect the rate of and quality of nesting habitat development.

Management decision within the fire area may affect the risk of future wild fires in the 0–10 Habitat Conservation Area (HCA).

3. Ecosystem Diversity/Function

Management decisions to recover the Warner fire area could result in plant communities with different genetic characteristics, structural components and species composition, thereby affecting biodiversity.

4. Research

An opportunity exists to set aside all, or a portion of the fire area for studies of how both natural and managed landscapes respond to large scale fires. Designation of a portion of the fire area as a control, with no activities permitted would allow for comparison between natural and management affected fire recovery rates.

5. Recreation

Construction of roads and other management activities within the inventoried roadless area portion of the burn would irretrievably change the roadless characteristics of the area.

6. Water Quality

Management decisions may affect beneficial water uses such as fish habitat, municipal/domestic water sources, and the Oakridge fish hatchery.

7. Socioeconomic

Management decisions may affect revenues to government and employment and income to local communities.

There are no permits or licenses required to implement any of the proposed activities.

Analysis of the fire effects and prescriptions for resource recovery will be done in consultation with the U.S. Fish and Wildlife Service (USFWS). The Willamette National Forest will serve as lead agency in this analysis with the Oregon Department of Fish and Wildlife and the USFWS as potential cooperating agencies.

The official responsible for making these decisions is Darrel L. Kenops, Willamette National Forest Supervisor, P.O. Box 10607, Eugene, Oregon 97440. It is estimated that a draft EIS will be ready for review in August of 1992 and it is estimated the final EIS will be published in March of 1993.

The Willamette National Forest invites written comments and suggestions on the scope of analysis and concerns to be addressed. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)*. Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Dated: April 3, 1992.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 92-8392 Filed 4-10-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8-92]

Proposed Foreign-Trade Zone—Fairbanks, Alaska Application Filed

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Fairbanks Industrial Development Corporation (an Alaska non-profit corporation), requesting authority to establish a general-purpose foreign-trade zone in Fairbanks, Alaska, within the Fairbanks Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 2, 1992. The applicant is authorized to make the proposal under section 45.77.010 of the Alaska Statutes.

The proposed foreign-trade zone would consist of 3 sites in the greater Fairbanks area. Site 1 is at the Fairbanks International Airport (3,579 acres), which is owned and operated by the State of Alaska's Department of Transportation and Public Facilities. Site 2 is the University of Alaska's Poker Flat Research Range (5,146 acres), located in the Fairbanks North Star Borough (30 mi. north of Fairbanks), which includes a satellite launching facility. The facility is owned by the State of Alaska. Site 3 involves the North Star Industrial Park (85 acres), South Cushman Street and Van Horn Drive in Fairbanks. This site, which is owned by North Star, Inc., contains several warehouse facilities.

The application indicates there is a need for zone services in the Fairbanks area. The zone project is designed to provide zone services particularly for companies requiring an airport location. It involves sites which would be available for warehousing/distribution activity for items such as snow machines and oilfield production equipment. The Poker Flat Research Range site is being developed as a center for launching unique high latitude small payload satellites. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10-8-91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 12, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 29, 1992).

While no public hearing has been scheduled for the FTZ Board, consideration will be given to such a hearing during the review.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 6450 Old Airport Way, Fairbanks, AK 99706.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 7, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-8477 Filed 4-10-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension

agreements with March anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with March anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than March 31, 1993.

	Periods to be reviewed
Antidumping Duty Proceedings and Firms	
Canada:	
Iron Construction Castings—A-122-503	
LaPerle Foundry, Inc., Penticton Foundry, Ltd., Titan Foundry Ltd., Associated Foundry	3/1/91-2/29/92
Germany:	
Brass Sheet & Strip—A-428-602	
Wieland-Werke AG, Langenberg Kupfer und Messingwerke GmbH KG, Metallwerke Schwarzwald GmbH, William Prym, Schwermetall Halbzeugwerke	3/1/91-2/29/92
Italy:	
Brass Sheet & Strip—A-475-601	
Europa Metalli-LMI SpA.	
Japan:	
Television Receiving Sets, Monochrome & Color—A-588-015	
Citizen Watch Co., Ltd	3/1/91-2/29/92
Sweden:	
Brass Sheet & Strip—A-401-601	
Outokumpu Copper Rolled Products AB	3/1/91-2/29/92
Thailand:	
Certain Circular Welded Carbon Steel Pipes & Tubes—A-549-502	
Saha Thai Steel Pipe Co., Ltd.	3/1/91-2/29/92
Countervailing Duty Proceedings	
Argentina:	
Certain Apparel—C-357-404	1/1/91-12/31/91
Argentina:	
Leather Wearing Apparel—C-357-001	1/1/91-12/31/91
Brazil:	
Cotton Yarn— C-351-037	1/1/91-12/31/91
Netherlands:	
Standard Chrysanthemums C-421-601	1/1/91-12/31/91
Pakistan:	
Cotton Shop Towels—C-535-001	1/1/91-12/31/91
South Africa:	
Ferrochrome—C-791-001	1/1/91-12/31/91
Thailand:	
Certain Apparel—C-549-401	

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c) (1989).

Dated: April 7, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-8475 Filed 4-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-810]

Mechanical Transfer Presses From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 15, 1992, the Department of Commerce published the preliminary results of this administrative review of the antidumping duty order on mechanical transfer presses from Japan. The review covers one manufacturer/exporter and the period August 18, 1989, through January 31, 1991.

We gave interested parties an opportunity to comment on our preliminary results of this review. At the request of the petitioners, we held an administrative hearing on February 27, 1992. Based on our analysis of comments received and the correction of certain clerical errors, we have changed the final results from those presented in our preliminary results of the review.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Helen M. Kramer or Linda D. Ludwig, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On January 15, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 1722) the preliminary results of the administrative review of the antidumping duty order on mechanical transfer presses from Japan. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

Imports covered by this review are mechanical transfer presses currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

For purposes of this review, the term "mechanical transfer press" refers to automatic metal-forming machine tools with multiple die stations, in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled, unassembled, or disassembled.

This review covers sales and entries by one manufacturer/exporter, Ishikawajima-Harima Heavy Industries Co., Ltd. (IHI) during the period from August 18, 1989, through January 31, 1991. This review does not cover spare and replacement parts and accessories. Spare and replacement parts separately have been determined to be outside the scope of the antidumping order in a ruling issued on March 17, 1992. Accessories are the subject of a pending scope inquiry.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We

received timely comments from the petitioners and the respondent and from Hitachi Zosen Corporation (Hitachi Zosen), an interested party. At the request of the petitioners, a public hearing was held on February 27, 1992.

Comment 1: Petitioners argue that actual credit costs must be used to make a circumstance of sale adjustment, and urge the Department to recalculate credit costs based on actual dates when payments are made, rather than on payments provisions contained in the terms of sale. The respondent argues that the methodology used by the petitioners is incorrect, because it does not take into account the fact that grace periods are permitted after receipt of the promissory notes. In the home market, a grace period of 65 days was granted before the customer had to transfer the sum due on account.

Department's Position: For the final results, the Department revised credit expenses in the constructed value calculation to reflect the actual dates payments were received for the home market sales, because payment is often made later than stated in the terms of sale. We used the ex-factory price plus the cost of U.S. packing as the amount receivable, and revised the claimed U.S. credit expense on the basis of the number of days between the day of shipment and the date payment was received.

Comment 2: Petitioners urge the Department to disallow a circumstance of sale adjustment for warranty costs, because no such costs were actually incurred during the period of review. Petitioners also argue that the reported data do not permit an accurate calculation of those expenses, inasmuch as IHI failed to segregate fixed from variable expenses and to establish a direct relationship to sales of mechanical transfer presses during the review period. Responsent argues that there are no grounds for denying these expenses, as IHI has clearly demonstrated they are directly related to sales of mechanical transfer presses.

Department's Position: The Department believes that an adjustment is warranted. In the questionnaire dated April 19, 1991, we asked the respondent to provide warranty expenses related to sales of mechanical transfer presses for the five years preceding the period of review, recognizing that the lengthy production process for large capital equipment may result in warranty costs directly related to the sales under review being incurred only after the review period (Antidumping Questionnaire, April 19, 1991, p. B–9). See Final Determination of Sales at Less than Fair Value: Mechanical Transfer Presses from Japan, 55 FR 335, 343 (January 4, 1990) and Coated Groundwood Paper from Finland, 56 FR 56363, 56379 (November 4, 1991). (Department accepted claims for warranty expenses based on historical experience, because actual warranty expenses for the period of investigation (POI) would not be known until long after the POI.)

The Department finds that the claimed expenses are directly related to the sales of mechanical transfer presses in both markets. IHI's accounting system tracks warranty costs on a product-specific basis. However, IHI's accounting system does not distinguish between fixed and variable expenses. The Department allows adjustments for differences in variable warranty and technical service expenses which can be directly related to the sales under review, and treats fixed expenses as indirect selling expenses. Therefore, for the purposes of this review, the Department used as best information available IHI's calculation of the fixed overhead ratio for the Design and Engineering Department, which performs warranty work. For the final results, we revised both the home market and U.S. warranty expenses to exclude the percentage of the Design and Engineering Department's costs representing fixed overhead expenses, and added these fixed costs to indirect selling expenses. We used as the basis of our calculations the ex-factory price plus the cost of U.S. packing. We also added the cost of U.S. procurement items, *i.e.*, components purchased in the United States, as any warranty repairs would have to cover the entire machine, including those items.

Comment 3: Petitioners argue that, if the Department adjusts constructed value for differences in technical service expenses, it should use the submitted data for the period of review (POR) (rather than historical costs), and allow only variable costs as a circumstance of sale adjustment.

Department's Position: The Department finds the historical data a more reasonable basis for calculating differences in technical service expenses. The technical service expenses incurred in the United States during the POR were partly attributable to merchandise other than mechanical transfer presses. IHI was unable to separate the technical service expenses for the unrelated merchandise. The Department determined that attributing these expenses to mechanical transfer press sales during the POR would overstate the expenses attributable to the merchandise under review. (See Supplemental Response of Ishikawajima-Harima Heavy Industries Co., Ltd., October 17, 1991, pp. 1–2).

As with the calculation of warranty expenses noted in Comment 2, for the final results, we revised both the home market and U.S. technical service expenses to exclude the percentage of the Design and Engineering Department's costs representing fixed overhead expenses, and added these fixed costs to indirect selling expenses. We used as the basis of our calculations the ex-factory price plus the cost of U.S. packing and the cost of U.S. procurement items.

Comment 4: The petitioners argue that a certain non-operating income item designated proprietary, and shown in IHI's Supplemental Response (August 13, 1991) at Exhibit 12, should be excluded from the constructed value calculation, because the item does not affect the costs incurred to produce or market the merchandise under review.

Department's Position: The Department determined that the item did not affect the costs incurred to produce or market the merchandise under review. Therefore, we have not included the item in our constructed value calculations.

Comment 5: The respondent argues that the Department understated IHI's U.S. price in its preliminary results of review. Respondent notes that the purchase order included an ex-factory price and a separate price for packing, foreign inland freight, insurance and port charges. Respondent contends that the Department should have added the two prices and then subtracted the price of foreign inland freight, insurance and port charges, rather than adding the cost of packing to the ex-factory price. Petitioners argue that the Department correctly calculated the net price.

Department's Position: The procedure the Department used to calculate the U.S. price is mandated by provisions of the Act and the Department's regulations. Packing was not included in the ex-factory price of the merchandise, as stated on the purchase order. If the cost of packing is not included in the price to the first unrelated customer in the United States, section 772(d)(1)(A) of the Act states that U.S. price shall be increased by "the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise condition, packed ready for shipment to the United States," and section 353.41(d)(1)(i) of the Regulations states that the Secretary will increase the United States price by "the cost of containers, coverings, and other expenses incident to placing the merchandise in condition packed ready

for shipment to the United States" when not included in the price (emphasis supplied). See also the Department's final determination of sales at less than fair value in Offshore Platform Jackets and Piles from Japan, 51 FR 11788 (1986), where the Department used the costs, rather than the prices, of the loadout and tiedown of the platform (installation expenses) in adjusting the U.S. price.

Comment 6: Respondent argues that the Department should not have recalculated its product-specific research and development (R&D) costs, which were based on net sales, because it was not informed that its methodology was incorrect. Because the Department did not have cost of sales (COS) data for the merchandise under review, it used total COS for the projects exported to the United States during the period of review. However, these projects accounted for a relatively small proportion of all mechanical transfer press projects completed during the review period. Thus, the Department's methodology unfairly increased the R&D costs included in the constructed value calculation. Respondent argues that the Department should revise its calculation of COS for mechanical transfer presses by using the ratio of the Machinery and Structures Division's COS to net sales, and applying that ratio to mechanical transfer press net sales.

Petitioners argue that product R&D expenses should be allocated to mechanical transfer presses, and that the Department's normal methodology should be based on COS of the mechanical transfer presses. Further, IHI's proposed methodology to base R&D expenses on divisional sales is unreasonable, because the relationship between COS and net sales will not be constant for all products produced by the division.

Department's Position: The Department's normal methodology is to allocate R&D costs based on COS. However, the Department did not explicitly request the information in this form, and in this case an allocation of R&D costs based on net sales is not unreasonable. We note that using either method does not change the results.

Comment 7: Hitachi Zosen argues that the Department departed from its current practice in the preliminary results in setting the "all others" rate at the rate in the original less than fair value investigation. The petitioners argue that the Department should maintain the 14.51 percent "all others" rate in its final results, as this review covers only one company and one sale, while the original investigation covered over 60 percent of sales by all companies. Petitioners further argue that, although adopting the highest rate for any firm in the administrative review as the "all others" rate may have been reasonable under prior law, when an administrative review was conducted every year for all sales, this practice is unreasonable under the revised statute in which annual reviews are no longer automatic. The current practice may result in an unrepresentative dumping margin and permit circumvention of the antidumping laws.

Department's Position: The Department's current practice is to set the "all others" rate at the highest rate for any firm covered in the administrative review. Accordingly, the "all others" cash deposit rate on entries made on or after the date of publication of this notice will be zero, the rate for the only sale made during the review period by any company reviewed. Liquidation will continue to be suspended and, if dumping margins are determined to exist on sales in subsequent periods, the antidumping duty plus interest will be assessed from the date of entry of the merchandise, and the cash deposit rate will be adjusted accordingly.

Final Results of Review

As a result of our analysis of the comments received and correction of certain clerical errors, we have changed our preliminary results and find that no dumping margin exists for IHI. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) the cash deposit rate for all other manufacturers or exporters will be zero. This rate represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period.

Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: April 7, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-8478 Filed 4-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On November 4, 1991, the Department of Commerce published the final results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (56 FR 56401). The review covered five manufacturers/ exporters and the period April 1, 1986 through March 31, 1987.

After publication of the final results of administrative review, we received comments from Hitachi Metals Techno (Hitachi) concerning the existence of ministerial errors. We agree that there were two ministerial errors with regard to Hitachi. Additionally, upon further review we determined that there was one ministerial error with regard to Izumi Chain Co. in the final results. We have corrected these errors and amended the final results.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Heaney or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION: On November 4, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 56401) the final results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226; April 12, 1973). After publication of the final results of administrative review, we received timely comments from Hitachi, pursuant to 19 CFR 353.28, detailing certain ministerial errors. Additionally, we determined that there was one ministerial error with regard to Izumi, which the Department had indicated in the final results would be corrected, but, in fact, was not corrected.

Section 1333(b) of the Omnibus Trade and Competitiveness Act of 1988, which amended section 751 of the Tariff Act of 1930, as amended (the Act), authorizes the Department to establish procedures for the correction of ministerial errors in the final determinations issued by the Department. Section 751(f) of the Act defines the term "ministerial error" to include errors in addition, subtraction, or other arithmetic functions, or clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial. Regulations establishing procedures for the correction of ministerial errors are found at 19 CFR 353.28. In accordance with section 751(f) of the Act, we have reviewed the comments submitted by Hitachi and we agree that there were two ministerial errors in the final results. Further, we have determined that there was one ministerial error with regard to Izumi Chain Co. Accordingly, we have corrected these ministerial errors and are amending the final results of administrative review for the period April 1, 1986 through March 31, 1987.

Ministerial Errors

Hitachi Metals Techno

Hitachi states that its margin represented only exporter's sales price (ESP) sales and not its combined ESP and purchase price sales. Hitachi additionally points out that in our response to comment 6, we agreed to correct certain keypunch errors made by Hitachi. Hitachi points out that in one situation we inadvertently corrected the wrong observation. We agree and have made the appropriate corrections.

Izumi Chain Co.

In our response to Izumi Chain Co.'s comment 4, we agreed to correct two model codes that were incorrectly labeled in the computer program. In reviewing these corrections we discovered that one correction was not made. We have made the proper correction for these amended final results.

Amended Final Results of Review

Based on the correction of ministerial errors, we have determined that the following margins exist for the period April 1, 1986 through March 31, 1987:

Manufacturer/exporter	Margin (percent)
Hitachi Metals Techno	3.42.
Izumi Chain Co	3.50.
Pulton Chain Co	*3.50.
Takasago (RK Excel Co)	*3.50.
Toyota Motor Co	*3.50.

* Rate based on the best information available (BIA), as discussed in the preliminary results of review (56 FR 23680, May 23, 1991).

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions for all companies directly to the Customs Service.

Given the fact that final margins have been published for more recent review periods for all firms except Toyota Motor Co., the above margins will have no impact on the current cash deposit rates for Hitachi Metals Techno, Izumi Chain Co., Pulton Chain Co., and Takasago (RK Excel Co.).

Furthermore, the following deposit requirements will be effective upon publication of this notice of amended final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Toyota will be 3.50 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the highest non-BIA rate published for the most recent period.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice is published pursuant to 19 CFR 353.28.

Dated: April 6, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–8476 Filed 4–10–92; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Withdrawal of OMB Clearance Request for Information Reporting to the Internal Revenue Service and Taxpayer Identification Number

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of request to OMB for review and approval of an extension for information collection requirements (9000–0097).

SUMMARY: The Federal Acquisition Regulation (FAR) Secretariat has withdrawn from the Office of Management and Budget (OMB) a request under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), to review and approve an extension for an information collection requirement concerning Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number). We are, therefore, cancelling the notice requesting public comment published in the Federal Register at 57 FR 11303, April 2, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, Office of Federal Acquisition Policy, GSA (202) 501–4755.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–8389 Filed 4–10–92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 27–28 April 1992.

Time: 0800–1700 hours daily.

Place: Ft. Monmouth, NJ.

Agenda: The Land Warfare Combat Identification 1992 Summer Study Panel of the Army Science Board will meet for discussions focused on: (1) AMC activities in developmental programs and funding levels for material solutions; (2) specific characteristics of near-, mid- and long-term programs; (3) status of technology development, ongoing and planned, to support antifratricide solutions; and (4) results of tests and evaluation of antifratricide materiel. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–8501 Filed 4–10–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to South Dakota State University

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance awards.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to South Dakota State University (SDSU) under Grant No. DE–FG01–92CE15544. The proposed grant will provide Government funding in the estimated amount of $79,950 for SDSU to construct, bench test, and field test a field grid system for yield mapping and machine control during harvesting. This system when applied to American farmland could result in an annual savings of 30 million barrels of oil annually.

The grant is being awarded to SDSU on an unsolicited basis, because it supports a unique energy saving technology which has been recommended by the National Institute of Standards and Technology (NIST). Dr. Joseph Schumacher of SDSU's College of Mechanical Engineering will be the principal investigator. He has a Ph.D. in mechanical engineering from Cornell University and seven years of experience at SDSU. His unique knowledge and experience is critical to the project. Also, the University's facilities and farmlands make SDSU essential to the success of the project.

In accordance with 10 CFR 600.14(e)(1), it has been determined that this project represents a unique idea that is not eligible for financial assistance under a recent, current, or planned solicitation. The Energy-Related Inventions Program (ERIP) has been structured, since its beginning in 1975, to operate without competitive solicitations, because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The proposed technology has a strong possibility of allowing for future reductions in the energy consumption of the United States. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant shall be 24 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: John Windish, PR–322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 92–8472 Filed 4–10–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP92–432–000, et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP92–432–000]

April 1, 1992.

Take notice that on March 24, 1992, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP92–432–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate sales taps for the delivery of natural gas to end users under K N's blanket certificate issued in Docket Nos. CP83–140–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N proposes to construct and operate 43 sales taps to provide sales service to various end user customers located along its jurisdictional pipelines, as described in the attached appendix. K N states that the customers would reimburse it for a portion of the construction costs through imposition of a connection charge which varies by state as follows: Kansas—$250, Nebraska—$400, and Colorado—$400. K N advises that the gas delivered and sold by K N to the various end users would be priced in accordance with the currently filed rate schedules authorized by the applicable state and local regulatory bodies having jurisdiction over the sales. K N further states that the proposed sales taps are not prohibited by any of its existing tariffs, the gas would be served directly from K N's general system supply, and the additional taps would have no significant impact on its peak day and annual deliveries.

Comment date: May 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

PROPOSED SALES TAPS

Delivery point	Location	Peak day quantity	Annual Mcf	End-use	Est. cost
Resident/Occupant 92-1, Amanda Ellis Farms	Phelps Co., Nebraska	30	990	Irrigation	$850
Resident/Occupant 92-2, Richard Wenstrom	Edwards Co., Nebraska	30	990	Irrigation	850
Resident/Occupant 92-3, John Hiza	Hamilton Co., Nebraska	22	715	Irrigation	850
Resident/Occupant 92-4, Leland Anderson	Kearney Co., Nebraska	24	790	Irrigation	850
Resident/Occupant 92-5, Nugget Farms	Phelps Co., Nebraska	24	790	Irrigation	850

PROPOSED SALES TAPS—Continued

Delivery point	Location	Peak day quantity	Annual Mcf	End-use	Est. cost
Resident/Occupant 92-6, Clarence Schmidt	Seward Co., Nebraska	30	990	Irrigation	850
Resident/Occupant 92-7, Gloria Jorgensen	Fillmore Co., Nebraska	23	750	Irrigation	850
Resident/Occupant 92-8, Glen Potter	Franklin Co., Nebraska	24	790	Irrigation	850
Resident/Occupant 92-9, Keith Carlson/Galen Lind.	Kearney Co., Nebraska	24	790	Irrigation	850
Resident/Occupant 92-10, Al Sbury, Inc.	Dundy Co., Nebraska	30	990	Irrigation	850
Resident/Occupant 92-11, Jacobsen Farms	Fillmore Co., Nebraska	30	990	Irrigation	850
Resident/Occupant 92-12, Gale Dinkelman	York Co., Nebraska	30	990	Irrigation	850
Resident/Occupant 92-13, Robert Doremus	Polk Co., Nebraska	24	790	Irrigation	850
Resident/Occupant 92-14, Loren Neimann	Seward Co., Nebraska	30	990	Irrigation	850
Resident/Occupant 92-15, J. D. Herschfeld	York Co., Nebraska	29	970	Irrigation	850
Resident/Occupant 92-16, Rollen Roches	Polk Co., Nebraska	26	870	Irrigation	850
Resident/Occupant 92-17, Dennis Beckman	Phelps Co., Nebraska	24	790	Irrigation	850
Resident/Occupant 92-18, First Farm Corp.	Hamilton Co., Nebraska	26	870	Irrigation	850
Resident/Occupant 92-19, Bill Karges	Boone Co., Nebraska	30	990	Irrigation	850
Resident/Occupant 92-20, Andy Wilshusen	Hamilton Co., Nebraska	47	1,485	Irrigation, heating and grain drying	1,150
Resident/Occupant 92-21, Daniel Guthrie	Fillmore Co., Nebraska	30	990	Irrigation	850
Resident/Occupant 92-22, Francis J. Leif	York Co., Nebraska	26	870	Irrigation	850
Resident/Occupant 92-23, George Thorell	Gosper Co., Nebraska	31	1,000	Irrigation	850
Resident/Occupant 92-24, Bryan Nitchie	Kearney Co., Nebraska	29	960	Irrigation	850
Resident/Occupant 92-25, Robert Trausch	Adams Co., Nebraska	26	870	Irrigation	850
Resident/Occupant 92-26, Danny Softley	Fillmore Co., Nebraska	30	990	Irrigation	850
Resident/Occupant 92-27, Kendall Ham	Clay Co., Nebraska	20	650	Irrigation	850
Resident/Occupant 92-28, Firstier Bank	Adams Co., Nebraska	26	870	Irrigation	850
Resident/Occupant 92-29, Yuma Feeder Pig	Yuma Co., Colorado	175	10,400	Commercial	2,700
Resident/Occupant 92-30, Dorman R. Schilke	Chase Co., Nebraska	4	250	Domestic	850
Resident/Occupant 92-31, Richard L. Dresen	Yuma Co., Nebraska	4	250	Domestic	850
Resident/Occupant 92-32, Dan Gitt	Phelps Co., Nebraska	5	300	Domestic	850
Resident/Occupant 92-33, Mike Ellis	Scott Co., Kansas	12	720	Domestic	850
Resident/Occupant 92-34, U. P. Resources	Finney Co., Kansas	12	720	Commercial	850
Resident/Occupant 92-35, Dan Gitt	Phelps Co., Nebraska	36	1,190	Irrigation	1,150
Resident/Occupant 92-36, Willard Nyquist	Kearney Co., Nebraska	24	790	Irrigation	850
Resident/Occupant 92-37, Wilbur Anderson	Fillmore Co., Nebraska	30	990	Irrigation	850
Resident/Occupant 92-38, Roger Siebert	York Co., Nebraska	9	80	Grain dryer	850
Resident/Occupant 92-39, Clarence Michaelis	Edwards Co., Kansas	30	990	Irrigation	850
Resident/Occupant 92-40, Mike Ellis	Scott Co., Kansas	33	300	Grain dryer	1,150
Resident/Occupant 92-41, Clinton Bender	Adams Co., Nebraska	50	430	Grain dryer	1,150
Resident/Occupant 92-42, Ronald F. Clark	Fillmore Co., Nebraska	30	990	Irrigation	850
Resident/Occupant 92-43, Leslie Plock	Fillmore Co., Nebraska	30	990	Irrigation	850

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP92-407-000]

April 1, 1992.

Take notice that on March 12, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-407-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157,212) for authorization to increase the maximum daily delivery obligation at three delivery points serving Indiana Gas Company, Inc. (Indiana Gas), under Panhandle's blanket certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle proposes to increase the maximum contract demand to Indiana Gas at the Crawfordsville, Lebanon and Westfield-Sheridan delivery points, for natural gas sales service under Panhandle's Rate Schedule G-1. Panhandle explains that its proposal is the result of the conversion by Indiana Gas of a portion of contract demand sales volumes under an October 26, 1990, service agreement to firm transportation volumes. Panhandle states that demand volumes were reduced at each of the delivery points covered by the service agreement except for these three named delivery points, effective March 1, 1991, as shown in the attached appendix. Panhandle further states that under the superseding service agreement dated March 1, 1991, the new maximum daily delivery obligation at the named delivery points would be greater than before the conversion due to realignment of volumes. Panhandle advises that the abandonment of firm sales entitlements for the other delivery points was achieved by their conversion to firm transportation volumes pursuant to Order 500-J and § 284.10 of the Commission's regulations.

Comment date: May 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

PANHANDLE EASTERN PIPE LINE COMPANY

Points of delivery	Volumes, Mcf		
	10/26/90 contract	03/01/91 contract	Volume change
Crawfordsville	16,115	20,664	+4,549
Lebanon	9,100	14,999	+5,899
Westfield.Sheridan	950	4,625	+3,675

PANHANDLE EASTERN PIPE LINE COMPANY—Continued

Points of delivery	Volumes, Mcf		
	10/26/90 contract	03/01/91 contract	Volume change
Subtotal	26,165	40,288	+14,123
Anderson #2	12,565	2,440	
Carpentersville	8,500	7,568	
Dana	225	200	
Danville	1,600	1,511	
Elwood	12,000	7,245	
Fairmount	20,400	11,770	
Huntington	12,200	6,990	
Muncie #1—King	20,000	1,433	
Muncie #2—Unionport	1,000	800	
Main Line Rurals	170	168	
Montpelier	1,100	772	
Newport	300	121	
Noblesville	2,750	2,702	
North Salem	525	162	
Richmond	32,000	15,427	
Rockville-Bloomingdale	5,000	3,044	
Tipton	5,000	2,484	
Upland	17,500	15,402	
Zionsville	61,030	50,923	
Subtotal	213,865	131,162	
Total	240,030	171,450	

3. Oregon Natural Gas Development Corp.

[Docket No. CI92-32-000]

April 1, 1992.

Take notice that on March 9, 1992, as supplemented on March 19, 1992, Oregon Natural Gas Development Corporation (Oregon) of 221 N.W. Second Avenue, Portland, Oregon 97209 filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing it to make sales for resale in interstate commerce of imported natural gas, without rate restrictions, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: April 20, 1992, in accordance with Standard Paragraph J at the end of the notice.

4. El Paso Natural Gas Co.

[Docket No. CP92-436-000]

April 2, 1992.

Take notice that on March 31, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso Texas 79978, filed in Docket No. CP92-436-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate a delivery point for service to Southern Union Gas Company (Southern Union) under El Paso's blanket certificate issued in Docket No. CP82-435-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

El Paso requests authorization to continue to operate the delivery point which was installed under the emergency provisions of part 284, subpart I, of the Commission's Regulations under the Natural Gas Policy Act of 1978 for the delivery of natural gas transported by El Paso for Southern Union and delivered to the International Water and Boundary Commission facility (IWBC) in El Paso County, Texas. It is stated that on March 5, 1992, Southern Union reported to El Paso a leak in its distribution line serving IWBC, which would prevent deliveries being made unless El Paso installed a new delivery point. It is explained that El Paso agreed to Southern Union's request and installed the replacement facilities, identified as the IWBC Tap, on March 5, 1992, with transportation commencing on March 9, 1992, pursuant to El Paso's agreement with Southern Union dated October 11, 1990, as amended July 2, 1991. It is asserted that deliveries to Southern Union at the new delivery point, 8 Mcf of gas per day, do not exceed those made previously at the Vowell Asphalt Plant Delivery Point. It is further asserted that this volume is within Southern Union's current entitlement from El Paso. It is stated that El Paso has sufficient capacity to accomplish the deliveries at the subject delivery point without detriment or disadvantage to El Paso's other customers.

Comment date: May 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. CNG Transmission Corp.

[Docket No. CP92-435-000]

April 2, 1992.

Take notice that on March 26, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP92-435-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add an additional delivery point to an existing, certificated transportation service that CNG provides to two cogenerator customers, Northeast Energy Associates (Northeast) and North Jersey Energy Associates (North Jersey), under CNG's blanket certificate issued in Docket No. CP82-537-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CNG states that by order issued on September 13, 1990, in Docket No. CP88-195-000, *et al.* (52 FERC ¶ 61,257), CNG was authorized to transport up to 50,000 Dt of natural gas per day for Northeast and 22,000 Dt of natural gas per day for North Jersey, pursuant to transportation agreements dated March 1, 1991. CNG further states that under the firm transportation agreements, CNG receives Northeast's and New Jersey's

gas at an interconnection with TransCanada PipeLines Limited (TransCanada) at Niagara Falls, Erie County, New York and then delivers such gas at one of the following existing delivery points:

(1) The interconnection between the facilities of CNG and the facilities of Transcontinental Gas Pipe Line Corporation in Clinton County, Pennsylvania, at a point known as Leidy.

(2) The interconnection between the facilities of Texas Eastern Transmission Corporation (Texas Eastern) in Westmoreland County, Pennsylvania, at a point known as Oakford.

CNG states that by this request, it seeks authorization to add one additional delivery point for Northeast and North Jersey at an existing interconnection between the facilities of CNG and Texas Eastern in Franklin County, Pennsylvania, known as Chambersburg.

CNG further states that this proposed additional delivery point gives CNG a third option in delivering these volumes, thereby increasing CNG's operating flexibility and that no new facilities are needed to effectuate the deliveries at Chambersburg.

CNG verifies that the following are true: (1) The total volumes to be delivered to a customer after the request do not exceed the total volumes authorized prior to the request; (2) The change is not prohibited by an existing tariff of the certificate holder; and (3) CNG will accomplish the deliveries to Northeast and North Jersey without detriment or disadvantage to its other customers.[1] The proposed additional delivery point would have a beneficial impact on CNG's system-wide peak day and annual deliveries by increasing CNG's operating flexibility, it is stated. CNG further verifies that the proposed facilities comply with the requirements of subpart F of part 157 of the Commission's Regulations under the Natural Gas Act.

Comment date: May 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Williston Basin Interstate Pipeline Co.

[Docket No. CP92–437–000]

April 3, 1992.

Take notice that on April 2, 1992 Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP92–437–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon three sales taps and the associated metering and appurtenant facilities under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon the following facilities, the Montana-Dakota Sales Tap-Station 519+14 on the six-inch Ellsworth Air Base Housing Lateral in the SE/4 of section 18, T2N, R9E; the Montana-Dakota Sales Tap-Station 524+51 on the six-inch Ellsworth Air Base Housing Lateral in the SE/4 of section 18, T2N, R9E; and the Montana-Dakota Sales Tap-Station 10106+57 on the 12-inch Belle-Fourche-Rapid City Yellow Line in the NE/4 of section 34, T2N, R7E, all located in Pennington County, South Dakota.

According to Williston Basin, the customer, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., no longer requires service through the sales taps and metering facilities. Williston Basin states that Montana-Dakota will now receive service through extensions of Montana-Dakota's distribution gas lines. Therefore, it is stated that the proposed abandonment is not expected to affect Williston Basin's peak day or annual sales to Montana-Dakota. Williston Basin further states that the sales taps and metering facilities will be abandoned on its existing transmission line right-of-way.

Comment date: May 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–8372 Filed 4–10–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92–05225T OKLAHOMA–13]

Oklahoma; NGPA Determination by Jurisdictional Agency Designating Tight Formations

April 6, 1992.

Take notice that on March 31, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore, Woodford, Hunton and Viola Formations underlying portions of Gavin, Grady and Stephens Counties qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area is more fully described on the appendix.

The notice of determination also contains Oklahoma's findings that the referenced portions of the Sycamore, Woodford, Hunton and Viola Formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and

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[1] CNG will deliver the Northeast and North Jersey volumes at Chambersburg only on days when sufficient capacity is available.

275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Township 5 North, Range 5 West,
Sec. 26: S/2
Sec. 27, 28, 29, 32 through 35: All.
Township 4 North, Range 5 West,
Sec. 1 and 2: All;
Sec. 3: E/2;
Sec. 11: N/2;
Sec. 12, 13 and 24: All.
Township 4 North, Range 4 West,
Sec. 6: SW/4;
Sec. 7: W/2;
Sec. 18: All;
Sec. 17: S/2;
Sec. 16: S/2;
Sec. 15: SE/4;
Sec. 19 through 23: All;
Sec. 25: W/2;
Sec. 26 through 30 and 32 through 36: All.
Township 3 North, Range 4 West,
Sec. 1 through 4, 9 through 15, 23 through 26 and 35 and 36: All.
Township 4 North, Range 3 West,
Sec. 31: S/2.
Township 3 North, Range 3 West,
Sec. 5: SW/4;
Sec. 6 and 7: All;
Sec. 8: W/2;
Sec. 17 through 20: All;
Sec. 21: SW/4;
Sec. 28: W/2;
Sec. 29 through 32: All;
Sec. 33: W/2.
Township 2 North, Range 4 West,
Sec. 1: All.
Township 2 North, Range 3 West,
Sec. 4: W/2;
Sec. 5 and 6: All.

[FR Doc. 92-8376 Filed 4-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-6-48-000 and 001]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

April 6, 1992.

Take notice that ANR Pipeline Company (ANR), on March 31, and April 2, 1992 tendered for filing as part of its Original Volume Nos. 1, 1-A, 2 and 3 of its FERC Gas Tariff, the tariff sheets listed on appendix A attached to the filing.

ANR states that the referenced tariff sheets are being submitted to reinstate references in ANR's tariff to the Gas Research Institute ("GRI") and the GRI Adjustment Charge as more fully described in the filing. ANR has requested that the Commission accept the tendered tariff sheets to become effective May 1, 1992.

ANR states that all of its Volume Nos. 1, 1-A, 2 and 3 customers and interested State Commissions have been apprised of this filing via U.S. Mail.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N. Capitol Street, NE., Washington, DC 20426 by April 13, 1992, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-8373 Filed 4-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-5-025]

CNG Transmission Corp.; Tariff Filing

April 6, 1992.

Take notice that on March 31, 1992, CNG Transmission Corporation (CNG) tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of April 1, 1992:

Fourteenth Revised Sheet No. 34

CNG states that the purpose of the tariff filing is to change Rate Schedule GSS-II rates to reflect the cost of certificated facilities associated with the North Summit Storage Pool and commencement of the Phase III level of APEC storage service.

CNG states that copies of the filing are being mailed to CNG's customers, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-8382 Filed 4-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-25-000]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 6, 1992.

Take notice that on April 1, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Tariff, Second Revised Volume No. 1:

Tariff sheet	Proposed effective date
Seventy-Sixth Revised Sheet No. 4.	June 1, 1992.
Thirty-Fifth Revised Sheet No. 4.1.	June 1, 1992.

MRT states that the instant filing reflects MRT's annual purchased gas cost adjustment (PGA), submitted pursuant to § 154.305 of the Commission Regulations and Paragraph 17 of MRT's Tariff. When compared to the gas costs contained in MRT's last scheduled PGA, the commodity component of Rate Schedule CD-1 and the single part rate under Rate Schedule SGS-1 reflect an increase of 14.84 cents per MMBtu. The demand charge component of Rate Schedule CD-1 reflects a decrease of 21.4 cents per MMBtu. The revised Surcharge Adjustments for the demand and commodity components of Rate Schedule CD-1 are credits of $.547 and $.0942, respectively. The new Surcharge Adjustment under Rate schedule SGS-1 is a credit $.1471 per MMBtu.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 20, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-8375 Filed 4-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-151-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 6, 1992.

Take notice that Northern Natural Gas Company (Northern) on April 2, 1992, tendered for filing to become part of Northern's FERC Gas Tariff Third Revised Volume 1, the following tariff sheets:

Fourth Revised Sheet No. 52G
Fifth Revised Sheet No. 52G.2
Fifth Revised Sheet No. 52G.3
Fourth Revised Sheet No. 52G.4
Fifth Revised Sheet No. 52G.5
Fourth Revised Sheet No. 52G.6
Third Revised Sheet No. 85Q
Fourth Revised Sheet No. 85Q.4

Northern states that such tariff sheets are being filed to propose additional enhancements to Northern's firm deferred delivery service of Super Peaking, Winter Period Injection, and expended operating parameters. Such enhancements are proposed to be effective at the beginning of the next storage cycle, to commence June 1, 1992.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NW., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions of protests must be filed on or before April 13, 1992. protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-8379 Filed 4-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-150-003]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

April 6, 1992.

Take notice that on April 1, 1992, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, Second Revised Sheet No. 416.

Northwest states that the purpose of the filing is to comply with the December 18, 1991 Joint Offer of Settlement (Settlement) and the March 24 letter order issued by the Commission in the above referenced docket. Northwest states that Sheet No. 416 duplicates the Pro Forma Sheet No. 416 filed with the Settlement, and provides that Northwest's delivery point priority will coincide with the first usage of such delivery points by shippers on the Northwest system where a constraint condition exists at the delivery point.

Northwest requests an effective date of May 2, 1992 for the tendered sheet.

Northwest states that a copy of the filing is being served on all parties of record in this docket, Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-8374 Filed 4-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-141-001]

Northwest Pipeline Corp.; Changes in FERC Gas Tariff

April 6, 1992.

Take notice that on March 25, 1992 Northwest Pipeline Corporation ("Northwest") tendered the following for filing and acceptance to be a part of its FERC Gas Tariff:

First Revised Volume No. 1-A

First Revised Sheet No. 509
First Revised Sheet No. 517
First Revised Sheet No. 518
Sheet Nos. 519 through 600

The purpose of this filing is to correct pagination errors present in Northwest's filing made on March 17 in this docket number.

Northwest has requested an effective date of April 17, 1992 for the tendered sheets. A copy of this filing is being served on Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-8378 Filed 4-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-3-55-000 and RP92-147-000]

Questar Pipeline Co.; Tariff Filing

April 6, 1992.

Take notice that Questar Pipeline Company on April 2, 1992, tendered for filing and acceptance Eighteenth Revised Sheet No. 12, Fourth Revised Sheet No. 12A, First Revised Sheet No. 19, and Original Sheet No. 19A to Original Volume No. 1, of its FERC Gas Tariff:

Questar states that these tariff sheets (1) remove from the Statement of Rates to Original Volume No. 1 the initial fixed monthly pipeline supplier charge applicable to the direct recovery of certain buyout/buydown costs assigned to it by Northwest Pipeline Corporation and (2) implement a tariff provision to allow Questar to recover certain take-or-pay related costs assigned to it by Colorado Interstate Gas Company.

Questar requests an effective date of May 1, 1992, for the proposed tariff sheets and states that this filing has been served upon interested parties and the Utah and Wyoming public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 385.211 and 385.214 of the Commission's Rules and Regulations (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-8380 Filed 4-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-2021-000 and CP92-431-000]

Questar Pipeline Co.; Site Visit April 6, 1992.

This is to inform all parties to the proceeding in the above dockets that the staff of the Federal Energy Regulatory Commission will conduct a site visit of Questar's Muddy Creek and Skull Creek Interconnects on April 20 and 21, 1992. The purpose of the staff's inspection is to determine if the facilities constructed in the above dockets are in compliance with the environmental requirements of section 7 of the Natural Gas Act and section 311 of the Natural Gas Policy Act, respectively.

All parties to the proceeding are welcome to attend. Anyone interested must provide their own transportation. For more information contact Mr. Michael Boyle at (202) 208-1003.

Lois D. Cashell,

Secretary.

[FR Doc. 92-8383 Filed 4-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-10-29-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

April 6, 1992.

Take notice that on April 1, 1992 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in appendix A attached to the filing. The tariff sheets are proposed to be effective on May 1, 1992.

The purpose of the instant filing is to calculate Transco's Year 5 PSP charges for the Annual Recovery Period May 1, 1992 through April 30, 1993 pursuant to Sections 29, 32, 34, and 36 of the General Terms and Conditions of Transco's Volume No. 1 Tariff.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest should be filed on or before April 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-8381 Filed 4-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-43-001]

Williams Natural Gas Co.; Withdrawal of Tariff Sheets

April 6, 1992.

Take notice that on March 9, 1992, Williams Natural Gas Company (WNG) tendered for filing its withdrawal of Second Revised Sheet Nos. 232 and 233, which were included in its annual PGA filing made in the above-referenced docket on February 28, 1992. WNG states that the notice of withdrawal does not affect the other tariff sheets filed on February 28, 1992.

WNG states that copies of the withdrawal are being served on all jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-8377 Filed 4-10-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-045]

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Amana Refrigeration, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Amana Refrigeration, Inc. (Amana) from the existing Department of Energy (DOE) test procedure for furnaces regarding blower time delay for the company's GUC line of condensing furnaces.

Today's notice also publishes a "Petition for Waiver" from Amana. Amana's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Amana seeks to test using a blower delay time of 30 seconds for its GUC line of condensing furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than May 13, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-045, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:
Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-

43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On January 9, 1992, Amana filed an Application for Interim Waiver regarding blower time delay. Amana's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulation air blower. Instead, Amana requests the allowance to test using a 30-second blower time delay when testing its GUC line of condensing furnaces. Amana states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.7 percent. Since current DOE test procedures do not address this variable blower time delay, Amana asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991. Thus, it appears likely that the petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Amana an Interim Waiver for its GUC line of condensing furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Amana was issued.

Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, April 3, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. Milton Hutchinson,

Chief Engineer, Heating and Air Conditioning, Amana Refrigeration, Inc., Amana, Iowa 52204

April 3, 1992.

Dear Mr. Hutchinson: This is in response to your January 9, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure for furnaces regarding blower time delay for Amana Refrigeration, Inc. (Amana) GUC line of condensing furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985,; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 FR 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991.

Amana's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Amana will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and

rated for energy consumption on a comparable basis.

Therefore, Amana's Application for an Interim Waiver from the DOE test procedure for its GUC line of condensing furnaces regarding blower time delay is granted.

Amana shall be permitted to test its GUC line of condensing furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modifications set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

January 9, 1992.

Assistant Secretary, Conservation & Renewable Energy,

United States Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Subject: Petition for Waiver and Application for Interim Waiver

Gentleman: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to title 10 CFR 430.27, as amended 14 November 1986. Waiver is requested from the test procedures for measuring the Energy Consumption of Furnaces found in appendix N of subpart B to part 430, specifically the section requiring a 1.5 minute delay between burner ignition and start-up of the circulating air blower.

Amana Refrigeration, Inc. requests a waiver from the specified 1.5 minute delay, and seeks authorization in its furnace efficiency test procedures and calculations to utilize a fixed timing control that will energize the circulating air blower 30 seconds after gas valve ignition. A control of this type with a fixed 30 second blower on-time will be utilized in our GUC line of high efficiency condensing furnaces.

The current test procedure does not credit Amana for additional energy savings that occur when a shorter blower on-time is utilized. Test data for these furnaces with a 30 second delay indicate that the heat-up cycle energy losses will decrease, the amount of condensate generated during the cyclic condensate test will increase, and the overall furnace AFUE will increase up to 1.7 percentage points. Copies of the confidential test data confirming these energy savings will be forwarded to you upon request.

Amana Refrigeration is confident that this waiver will be granted, as identical waiver requests for the Amana GUD, GUX and GCC series furnaces have been approved in the past by the Department of Energy.

Manufacturers that domestically market similar products are being sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

C. Milton Hutchinson,

Chief Engineer, Heating and Air Conditioning, Amana Refrigeration, Inc.

[FR Doc. 92–8328 Filed 4–10–92; 8:45 am]

BILLING CODE 6450–01–M

[Case No. F–046]

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Amana Refrigeration, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Amana Refrigeration, Inc. (Amana) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's GUI, GCI, and GSI series of induced draft furnaces.

Today's notice also publishes a "Petition for Waiver" from Amana. Amana's Petition for Wavier requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Amana seeks to test using a blower delay time of 30 seconds for its GUI, GCI, and GSI series of induced draft furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Wavier.

DATES: DOE will accept comments, data, and information not later than May 13, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F–046, Mail Stop CE–90, room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the

Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On January 9, 1992, Amana filed an Application for Interim Waiver regarding blower time delay. Amana's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Amana requests the allowance to test using a 30-second blower time delay when testing its GUI, GCI, and GSI series of induced draft furnaces. Amana states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.8 percent. Since current DOE test procedures do not address this variable blower time delay, Amana asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 4710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Amana an Interim Waiver for its GUI, GCI, and GSI series of induced draft furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Amana was issued.

Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC., April 6, 1992.

J. Michale Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. Milton Hutchinson,

Chief Engineer, Heating and Air Conditioning, Amana Refrigeration, Inc., Amana, Iowa 52204.

April 6, 1992.

Dear Mr. Hutchinson: This is in response to your January 9, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure for furnaces regarding blower time delay for Amana Refrigeration, Inc. (Amana) GUI, GCI, and GSI series of induced draft furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, and 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration, Inc., 56 FR 27958, June 18, 1991, and 56 FR 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991.

Amana's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Amana will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Amana's Application for an Interim Waver from the DOE test procedure for its GUI, GCI, and GSI series of induced draft furnaces regarding blower time delay is granted.

Amana shall be permitted to test its line of GUI, GCI, and GSI series of induced draft furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modifications set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control

shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Assistant Secretary, Conservation & Renewable Energy, United States Department to Energy 1000 Independence Avenue, SW. Washington, DC 20585

January 9, 1992.

Subject: Petition for Waiver and Application for Interim Waiver

Gentleman: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27, as amended 14 November 1986. Waiver is requested from the test procedures for measuring the Energy Consumption of Furnaces found in appendix N of subpart B to part 430, specifically the section requiring a 1.5 minute delay between burner ignition and start-up of the circulating air blower.

Amana Refrigeration, Inc. requests a waiver from the specified 1.5 minute delay, and seeks authorization in its furnace efficiency test procedures and calculations to utilize a fixed timing control that will energize the circulating air blower 30 seconds after gas valve ignition. A control of this type with a fixed 30 second blower on-time will be utilized in our GUI, GCI and GSI lines of induced draft furnaces.

The current test procedure does not credit Amana for additional energy savings that occur when a shorter blower on-time is utilized. Test data for these furnaces with a 30 second delay indicate that the overall furnace AFUE will increase approximately 0-8 percent compared to the same furnace when tested with the 1.5 minute delay. Copies of the confidential test data confirming these energy savings will be forwarded to you upon request.

Amana Refrigeration is confident that this waiver will be granted, as similar waivers have been granted in the past, to Coleman Company, Magic Chef Company, Rheem Manufacturing, the Trane Company and others. Similar waiver requests for the Amana GUD, GUX, and GCC series furnances have already been approved by the Department of Energy.

Manufacturers that domestically market similar products are being sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

C. Milton Hutchinson,

Chief Engineer Heating and Air Conditioning, Amana Refrigeration, Inc.

[FR Doc. 92–8470 Filed 4–10–92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. PP-95]

Floodplain/Wetland Involvement for an Electricity Export Authorization; Maine Public Service Co.

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of floodplain/wetland involvement.

SUMMARY: Maine Public Service Company, Alternative Energy, Inc., and Northeast Empire Limited Partnership #2 have applied to the Office of Fossil Energy of the Department of Energy (DOE) pursuant to section 202(e) of the Federal Power Act for authorization to transmit electric energy to a foreign country. The energy to be exported would be produced by a 39-megawatt, wood-burning electric powerplant to be constructed in Ashland, Maine. A 2.7-mile long 69-kilovolt (kV) transmission line also would be constructed to connect the powerplant to an existing 138-kV transmission line which crosses the U.S.-Canadian border. This application was noticed in the Federal Register on February 3, 1992 (57 FR 4011).

In accordance with DOE regulations for compliance with floodplain/wetland environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain and/or wetland assessment for the proposed project, to be incorporated into the environmental assessment of the proposed action that is being prepared in compliance with requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and the implementing CEQ Regulations, 42 U.S.C. 4371 *et seq.* Maps and further information are available from DOE at the address shown below for the Office of Fuels Programs.

DATES: Comments are due on or before April 28, 1992.

ADDRESSES: Send comments to: Warren E. Williams, Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: On general DOE floodplain/wetlands environmental review requirements or the status of a NEPA review, contact Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone (202) 586–4600 or 1–800–472–2756.

Issued in Washington, DC, April 6, 1992.

Charles F.Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–8474 Filed 4–10–92; 8:45 am]

BILLING CODE 6450-01-M

[Fe Docket No. 92–09–NG]

Alcorn Trading Co., Inc.; Application to Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on February 3, 1992, of an application filed by Alcorn Trading Company, Inc. (Alcorn) requesting blanket authorization to export up to 100 Bcf of natural gas to Mexico over a two-year period beginning with the date of first delivery. Alcorn states it would use existing pipeline facilities to implement the proposed exports and would advise DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, May 13, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

C. Frank Duchaine, Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, FE–53, 1000

Independence Avenue, SW., Washington, DC 20585, (202) 586-8233.
Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Alcorn, a Texas corporation with its principal place of business in Houston, Texas, requests authorization to export natural gas purchased from U.S. supplies to, among others, Petroleos Mexicanos (Pemex) for local distribution by Pemex to industrial, commercial and residential users. All sales would result from arms-length negotiations, and prices would be determined by market conditions.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention,and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Alcorn's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-8473 Filed 4-10-92; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 92-04; Certification Notice—97]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternative fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Georgetown—Cogeneration, L.P. Richmond, VA	03-26-92	Topping Cycle	68.9	Washington, DC.

Amendments to the FUA on May 21, 1987 (Public Law 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

This self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on April 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-8471 Filed 4-10-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $9,000,000, plus accrued interest, in alleged crude oil and refined product overcharge funds obtained from Anchor Gasoline Corporation, Case No. KEF-0120. The OHA has determined that the crude oil portion of the funds will be distributed in accordance with the DOE's Statement of Modified Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). The refined product portion of the funds will be distributed in accordance with the DOE's special refund procedures set forth at 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Applications for Refund submitted pursuant to this Decision must be filed in duplicate, postmarked no later than June 30, 1994, for crude oil applications, and no later than 180 days from the date of publication of this notice in the Federal Register for refined product applications, should bear a conspicuous reference to Case No. KEF-0120, and should be addressed to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Any party that has previously submitted a refund application in crude oil proceedings need not file another application; that application will be deemed filed in all crude oil proceedings finalized to date.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Anthony Swisher, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-8018 (Tedrow), (202) 586-6602 (Swisher).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute monies that have been remitted by Anchor Gasoline Corporation to the DOE to settle alleged pricing and allocation violations with respect to the firm's sales of crude oil condensate and certain refined petroleum products. The DOE is currently holding funds received from Anchor totalling $8,552,879.68 in principal in an interest-bearing escrow account pending distribution. The balance of the $9,000,000 minimum required from Anchor must be remitted on or before September 1, 1994.

The OHA has decided to distribute the crude oil portion of these funds in accordance with the DOE's Statement of Modified Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986) (SMRP). Under the SMRP, crude oil overcharge monies are divided among the States, the Federal Government, and injured purchasers of crude oil and refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of crude oil price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury. The refined product portion of the Anchor funds will be distributed in accordance with the DOE's special refund procedures set forth at 10 CFR part 205, subpart V.

As the decision and order indicates, applications for refund may now be filed by injured purchasers of crude oil and refined petroleum products. Applications must be filed in duplicate and postmarked no later than June 30, 1994, for crude oil applications and no later than 180 days from the date of publication of this notice in the Federal Register for refined product applications. The specific information required in an application for refund is set forth in the decision and order. As we state in the decision, any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed filed in all crude oil proceedings finalized to date. All applications received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: April 2, 1992.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

Decision and Order

Implementation of Special Refund Procedures

April 2, 1992.

Name of Firm: Anchor Gasoline Corporation.

Date of Filing: October 12, 1988.

Case Number: KEF-0120.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the Mandatory Petroleum Price and Allocation Regulations. See 10 CFR part 205, subpart V. On October 12, 1988, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Anchor Gasoline Corporation and its wholly owned subsidiary, Canal Refining Company (Anchor).

I. Background

Anchor was a petroleum refiner as that term was defined at 10 CFR 211.62, engaged in the business of purchasing and refining crude oil, extracting, fractionating, and selling natural gas liquids and natural gas liquid products. It therefore was subject to the federal petroleum price and allocation

regulations. An ERA audit of Anchor's records revealed possible violations of the price regulations at 10 CFR part 212. Specifically, the audit revealed that between August 1973 and October 1980, Anchor may have violated the DOE's pricing regulations with respect to its sales of gasoline, No. 2 distillate, and general refinery products. Furthermore, between August 1973 and July 1978, Anchor may have overcharged its customers in sales of crude oil condensate. Finally, the audit revealed that Anchor's subsidiary, Canal Refining Company, may have charged unlawful prices for unspecified products in seven transactions between July 1, 1980, and January 27, 1981.

In order to resolve its potential civil liabilities arising from the ERA's audit, Anchor entered into a Consent Order with the DOE on September 22, 1988. The Consent Order refers to ERA's allegations of overcharges but does not find that any violations occurred. In addition, the Consent Order states that Anchor does not admit any such violations. Under the terms of the Consent Order, Anchor is required to deposit $7,775,000 into an escrow account for ultimate distribution by the DOE. Furthermore, Anchor is required to deposit into the escrow account a percentage of its profits each year until 1994, bringing the total Consent Order funds to a minimum of $9,000,000. Whether the amount Anchor pays is more than the $9,000,000 minimum will be determined by the firm's levels of profitability in the upcoming years. According to the ERA, Anchor is not a profitable firm and will, in all likelihood, not deposit more than the required $9,000,000.[1] Hence, our calculations for this proceeding are based upon the assumption that the total funds remitted by Anchor will be the minimum required. Should more funds become available in the future, we will adjust our refund payments accordingly, ensuring that claimants who have already received refunds receive a proportionate share of any new funds as well. As of the date of this determination, Anchor has made payments totalling $8,552,879.68 into the account. The remainder of the required payments must be made on or before September 1, 1994.

On November 25, 1991, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Anchor consent order funds. 56 FR 61241 (December 2, 1991). In this Decision and Order, we will address the comments that were submitted in response to the PD&O and will adopt final refund procedures.

II. Summary of Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who may have been injured by alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As we indicated in the PD&O, the Anchor Consent Order resolved alleged violations involving both sales of crude oil and refined petroleum products. Therefore, we proposed to divide the consent order fund into two pools. See *Shell Oil Co.*, 18 DOE ¶ 85,492 (1989) (*Shell*). In the June 17, 1988, Federal Register Notice published by the ERA announcing the execution of a proposed Consent Order between the DOE and Anchor, the ERA indicated that 60% of the funds remitted pursuant to the proposed Consent Order were attributable to alleged crude oil violations, with the remaining 40% coming as a result of overcharges to purchasers of Anchor's refined petroleum products. Under these circumstances, we proposed to distribute the funds received from Anchor according to these percentages: 60% of the funds (or $5,400,000 plus accrued interest) to purchasers of crude oil in accordance with the provisions of the Final Settlement Agreement in the Stripper Well case and the remaining 40% (or $3,600,000 plus accrued interest) to purchasers of Anchor's refined petroleum products who were not Anchor affiliates and who may have been injured by Anchor's alleged regulatory violations.[2] We noted, however, the DOE was not bound by the initial percentages set forth by the ERA. See *Tesoro Petroleum Corp.*, 20 DOE ¶ 85,665 (1990). We indicated that if we received sufficient evidence from comments filed on the PD&O which would indicate that a different proportionate allocation of the consent order monies is warranted, we would consider altering the proposed distribution.[3]

In the PD&O, we also outlined procedures under which purchasers of Anchor refined covered products could apply for refunds. The procedures involve (1) assigning applicants shares of the Anchor settlement, *i.e.*, potential refund amounts; and (2) determining the extent to which the claimants were injured by the alleged overcharges. In order to permit applicants to make refund claims without incurring disproportionate costs as well as to allow us to consider those claims equitably and efficiently, we set forth a number of presumptions pertaining to both aspects of the refund procedures.

First, we presumed that the alleged product overcharges were spread evenly in all of Anchor's sales of refined covered products during the consent order period. We therefore proposed that an applicant's maximum potential refund generally should be computed by multiplying the per-gallon refund amount by the number of gallons of Anchor refined covered products that the claimant purchased during the refund period. The resulting figure is referred to as the claimant's "full volumetric share" of the Anchor consent order funds. We further proposed, however, that an applicant could rebut the volumetric refund presumption by showing that it sustained a disproportionate share of the alleged overcharges.

Because demonstrating that one was forced to absorb Anchor's alleged overcharges is potentially difficult, time-consuming, and expensive, we proposed to adopt a number of presumptions concerning injury. For example, we proposed to presume that resellers and retailers claiming refunds of $10,000 or less, end users, agricultural cooperatives, and certain types of regulated firms were injured by Anchor's alleged overcharges. We also proposed to presume that resellers and retailers that made only spot purchases from Anchor, as well as consignee agents, were not injured and are therefore ineligible for refunds. We stated that applicants not covered by one of these injury presumptions would be required to demonstrate that they were forced to absorb Anchor's alleged overcharges in order to receive their full volumetric shares of the Anchor consent order funds.[4] We further proposed, however, that with respect to their purchases of Anchor refined products, resellers and retailers should be allowed to receive 40 percent of their full volumetric shares up to $50,000, without making detailed demonstrations of injury.

III. Comments on the Proposed Procedures

On January 2, 1992, we received a set of comments on the PD&O filed by Philip P. Kalodner on behalf of a group of Utilities, Transporters and Manufacturers (Kalodner). These comments fall into three categories, each of which is discussed below.

A. Comments Concerning Technical Requirements

Kalodner first points out that the Notice fails to state that anyone who previously filed a crude oil claim need not file again and that the initial application will be deemed filed in all crude oil proceedings finalized to date. He suggests that such language be added to the final Decision. He further notes that the PD&O omitted a filing deadline for crude oil claims; pointing out that recent crude oil decisions have established June 30, 1992, as the filing deadline for Applications for Refund from the current pool of crude oil funds. He also asks that a statement of a filing deadline be added. Finally, he states that the volumetric amount given for refunds

[1] *See* memorandum of February 16, 1990 telephone conversation between Darlene Gee, OHA staff analyst, and Mike Tabor, ERA.

[2] We have previously held that affiliates or subsidiaries of a consent order firm are not eligible for refunds based upon the presumption that they were not injured. See, *e.g.*, *Marathon Petroleum Co./EMRO Propane Co.*, 15 DOE ¶ 85,288 at 83,528 (1987). This presumption applies to firms affiliated with Anchor during the consent order period, whether or not currently affiliated with the firm. See *Cosby Oil Co./Yucca Valley Liquor Store*, 13 DOE ¶ 85,402 at 88,986 (1986). It also applies to firms that have become affiliated with Anchor after the consent order period, because their receipt of a refund would allow the consent order firm to benefit from this proceeding. *See, e.g., Marathon Petroleum Co./Webster Service Stations*, 17 DOE ¶ 85,038 (1988).

[3] We received one set of comments on the proposed 60%–40% distribution. These will be addressed fully later in this Decision.

[4] As stated in the PD&O, an applicant attempting to demonstrate injury must (1) show that it maintained banks of unrecouped increased product costs of sufficient size to justify the amount of the refund claimed and (2) demonstrate that market conditions forced it to absorb to alleged overcharges.

from the crude oil portion of the Anchor funds is too low. We concur with each of these comments.

Regarding Kalodner's first comment, once an applicant files in the crude oil proceeding, he need not file an Application in each proceeding from which we add to the crude oil pool. This has been our policy from the beginning of the crude oil proceeding, and we have no intention of altering it now. See *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,898 (1987). Regarding his second comment, as set forth below, the filing deadline for Applications from the current pool of crude oil funds will be June 30, 1994. Finally, the volumetric refund amount stated in the PD&O was, in fact, incorrect. The correct volumetric is $.00000267194 ($5,400,000 / 2,020,997,335,000 gallons = $.00000267194 per gallon). We will modify the proposed language in the Crude Oil Claims section of this Decision to reflect the revised figure.

B. Comments Regarding the Distribution of Funds Between Crude Oil and Refined Products Claims

In the PD&O, we proposed to split the Anchor Consent Order funds between crude oil and refined product claims, with 60% of the funds being used to pay crude oil claims and the remaining 40% used for refined product claims. We reserved the right, however, to alter this distribution if we received sufficient evidence from comments filed in response to the PD&O to indicate that a different proportionate allocation was warranted. Mr. Kalodner seized this opportunity to argue that a greater share of the Consent Order funds be set aside for crude oil claims. (It should be noted that all of Mr. Kalodner's clients are actual or potential applicants in the crude oil proceeding.)

Kalodner first noted that the 60–40 distribution proposed in the PD&O is the result of the ratio of Anchor's total potential liability stemming from crude oil overcharges, including interest, to their total potential liability stemming from refined product overcharges, including interest. He states that a better distribution would be the ratio of the principal amounts of each of these figures, excluding interest. A distribution based upon this ratio would increase the crude oil portion from 60% to 67%. The principal benefit of this method of distribution seems to be that more money would be set aside for crude oil claims (*i.e.*, to the advantage of Mr. Kalodner's clients). We can see no intrinsic advantage to excluding interest when determining the respective proportions for crude oil and refined product claims.

Second, Kalodner argued that more weight should be given to the crude oil overcharges than to the refined product overcharges since the allegations of crude oil overcharges are contained in an affirmed Remedial Order (as opposed to the allegations of refined product overcharges which are contained in a Proposed Remedial Order) and are therefore "proven." As we have stated before, in the process of negotiating the Consent Order, the ERA evaluated the allegations raised against Anchor and entered into a settlement that it believed fairly concluded all administrative and legal proceedings, as well as accounted for unknown allegations and litigation risks. There is no reason for the distribution offered by the ERA to be altered merely on the basis of the stage particular remedial actions and reached at the time of the anchor Consent Order. None of these proceedings had finality in any sense. See Texaco Inc., 19 DOE ¶85,200 (1989).

Third, Kalodner states that under the proposed 60–40 distribution, the volumetric refund amount paid to purchasers of refined products is 2.621 times the volumetric paid to purchasers of crude oil. He argues that the crude oil pool should be increased in an attempt to remedy this disparity. There is no apparent logic to this argument. We adopted the volumetric approach in Subpart V refund proceedings because of the general absence of material setting forth with precision the magnitude of individual overcharges. The fact that a volumetric factor in one proceeding is greater or less than that calculated in another reflects the amount of the individual settlements and the number of gallons involved in each case. If a particular volumetric factor is higher than another, reflecting, for example, a greater settlement amount, this may in turn suggest that the amount of the alleged violations involved were also greater and, consequently, greater injury to purchasers. Clearly, nothing in that situation would suggest, as Kalodner does, that volumetric factors should somehow be equalized. Therefore, we reject this claim.

Finally, Kalodner notes that all of the funds set aside for crude oil refunds will either be given directly to injured parties or to the U.S. Treasury and the States for indirect restitution. On the other hand, any funds from the refined products pool that are left over after all valid claims have been paid will be distributed pursuant to the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). For this reason, Kalodner argues that the pool allocated for crude oil refunds should be increased and the pool for refined products refunds should be decreased. Kalodner's argument implicitly rests on the claim that the crude oil distribution method is somehow better than a PODRA distribution. However, no evidence is offered in support of this position, and we reject this claim.

After considering all of these comments, we can find no compelling evidence to indicate that the proposed 60–40 distribution of the alleged overcharge funds should be altered. Accordingly, we will set aside 60% of the Anchor funds for crude oil refunds and the remaining 40% for refined product refunds.

C. Comments Regarding the Distribution of Crude Oil Refunds

In his final comment, Kalodner states that the PD&O implies that each crude oil consent order will be treated as a separate proceeding. He notes that all of the funds remitted by various consent order firms in response to alleged crude oil overcharges have always been pooled and distributed to claimants under one proceeding. Kalodner requests that the DOE alter the final Decision and Order to eliminate any ambiguity in this regard. As Kalodner is well aware, the crude oil proceeding is a single, umbrella proceeding and all overcharge funds received stemming from alleged crude oil violations, including those from Anchor, will be pooled in that proceeding for ease of distribution. However, in the interest of avoiding any possible ambiguity, the language contained in the PD&O will be altered in this Decision to reflect the fact of a single crude oil proceeding.

IV. Distribution of Anchor Crude Oil Funds

The Anchor crude oil monies, $5,400,000,[5] plus interest, will be distributed in accordance with the Statement of Modified Restitutionary Policy (SMRP), which was issued by the DOE on July 28, 1986. 51 FR 27899 (August 4, 1986).[6] The SMRP, which was issued as a result of a court-approved Settlement Agreement in *The Department of Energy Stripper Well Litigation*, M.D.L. 378 (D. Kan. 1986), provides that crude oil overcharge payments will be distributed among the States, the United States Treasury, and eligible purchasers of crude oil and refined products.[7] Under the SMRP, up to 20 percent of these crude oil overcharge funds may be reserved to satisfy valid claims by eligible purchasers of crude oil and refined petroleum products. Remaining funds are to be disbursed to the state and federal governments for indirect restitution as directed by the SMRP. In the present case, we have decided to reserve the full 20 percent, or $1,080,000 of the initial $5,400,000 crude oil pool, plus a proportionate share of the accrued interest of that amount, for direct refunds to purchasers of crude oil and refined petroleum products who prove that they were injured as a result of alleged crude oil violations.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase

[5] We note that Anchor has not yet remitted the minimum $9,000,000 set forth in the Consent Order. As we stated earlier, Anchor is required to remit the funds in stages. Accordingly, while our discussion here assumes full payment of $9,000,000, the actual amount that we have received to date (and the amount subject to the ordering paragraphs of this Decision) is somewhat less.

[6] In the Order implementing the SMRP, the OHA solicited comments regarding the proper application of the SMRP to OHA refund proceedings involving alleged crude oil violations. On April 6, 1987, the OHA issued a notice which analyzes the comments that were submitted and explains the procedures the Office will follow in processing applications filed under subpart V regulations for refunds from the crude oil overcharge funds. 52 FR 11737 (April 10, 1987). Since the procedures apply to all crude oil funds subject to subpart V, we need not differentiate between the various crude oil transactions settled by the Anchor consent order.

[7] Under the Settlement Agreement, firms which applied for a portion of certain escrow funds established under the Settlement generally must have signed a waiver releasing their claims to any crude oil funds to be distributed by the OHA under Subpart V. Accordingly, those firms will not be eligible for a refund from the Anchor crude oil pool.

volumes and prove that they were injured as a result of alleged violations (*i.e.*, that they did not pass on the alleged overcharges to their customers). We will utilize standards for the showing of injury which OHA has developed for analyzing non-crude oil claims. See, *e.g.*, *Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). These standards include a presumption that end-users (*i.e.*, ultimate consumers) whose businesses are unrelated to the petroleum industry absorbed the increased costs resulting from a consent order firm's alleged overcharges. See *A. Tarricone, Inc.*, 15 DOE ¶ 85,495, at 88,894–896 (1987). However, reseller and retailer claimants must submit detailed evidence of injury, and may not rely upon the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They can, however, use econometric evidence of the type employed on the OHA Report in In *Re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507.

Refunds to eligible claimants will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil pool currently available ($5,400,000) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Based upon the amount of the crude oil pool currently available, the crude oil volumetric refund amount in this proceeding is $0.00000267194 per gallon. This volumetric refund amount will increase as interest accrues on the consent order fund. After all valid claims are paid, unclaimed funds from the 20 percent claims reserve will be divided equally between federal and state governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *E.g.*, *Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted to refund application in the crude oil refund proceedings need not file another application. The deadline for filing an application for Refund from the current (fifth) pool of funds will be June 30, 1994. It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of $.0008 per gallon. However, while we anticipate that applicants which filed their claims by June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds.

Under the terms of the SMRP, the remaining 80 percent of the crude oil pool ($4,320,000) and 80 percent of accumulated interest will be disbursed in equal shares to the federal and state governments for indirect restitution. *See shell Oil Co.*, 18 DOE ¶ 18,492 (1989). Accordingly, we will direct the DOE's Office of the Controller to segregate the crude oil share of Anchor's initial payment and set aside $2,160,000, plus appropriate interest, for distribution to the States and the same amount for distribution to the federal government. Refunds to the States will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the States under the Settlement Agreement.

V. Refined Product Claims

The remainder of the Anchor consent order fund ($3,600,000 plus interest accrued on that amount) shall be made available to eligible injured purchasers of Anchor refined products. Anchor purchasers who may have been injured by Anchor's alleged overcharges in its sales of refined petroleum products during the August 19, 1973 through January 27, 1981 consent order period (the consent order period) may file Applications for Refund.[8] From our experience with Subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (i) end-users; (ii) regulated entities, such as public utilities and cooperatives: and (iii) refiners, resellers and retailers (hereinafter collectively referred to as "resellers").

A. Calculation of Refund Amounts

The first step in the refund process is the calculation of an applicant's potential refund. The ERA specifically noted, however, that it was unable to identify all of the customers whom Anchor allegedly overcharged. In order to determine the potential refunds for these purchasers, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Anchor's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on A firm-wide basis in determining its prices.

The Volumetric refund presumption is rebuttable. The impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology. Accordingly, a claimant may submit evidence detailing the specific alleged overcharge that it incurred in order to be eligible for a larger refund. *See Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of eligible products that it purchased from Anchor during the consent order period, multiplied by a volumetric factor of $0.006942 per gallon.[9] In addition, each successful claimant will receive a pro-rata portion of the interest that has accrued on the Anchor funds since the date of remittance.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. See, *e.g.*, *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985); *see also* 10 C.F.R. § 205.286 (b). If an applicant's potential refund is calculated using the volumetric methodology, it must have purchased at least 2,161 gallons of Anchor refined products in order for its claim to be considered.

B. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether the claimant was injured by its purchases from Anchor, *i.e.*, whether it was forced to absorb the alleged overcharges. Based on our experience in numerous subpart V proceedings, we will adopt certain presumptions concerning injury in this case. The use of presumptions in refund cases is specifically authorized by DOE procedural regulations. 10 CFR § 205.282(e). An applicant that is not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

1. Injury Presumptions

The presumptions we will adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible. We will presume that end users of Anchor refined products, certain types of regulated firms, and cooperatives were injured by their purchases from Anchor. In addition, we will presume that resellers and retailers of Anchor products submitting small claims were injured by their purchases. On the other hand, we will presume that resellers and retailers that made spot purchases of Anchor products and those who sold it on consignment were not injured by their purchases. Each of these presumptions is listed below, along with the rationale underlying its use.

a. *End users.* In accordance with prior subpart V proceedings, we will presume that end users, *i.e.*, ultimate consumers of Anchor products whose businesses are unrelated to the petroleum industry, were injured by the firm's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of

[8] OHA will not accept Applications for Refund on behalf of classes of applicants. We have previously determined that such claims are inappropriate because they amount to a proposal for "indirect" restitution, *i.e.*, to distribute the funds attributable to parties not specifically identified by the DOE. See *Standard Oil Co. (Indiana)/ Diesel Automotive Assn.*, 11 DOE ¶ 85,250 (1984); *Office of Special Council*, 10 DOE ¶ 85,048, at 88,214 (1982).

[9] The minimum amount to be paid by Anchor, as set out in the consent order, is $9,000,000. Of that figure, 40% is to be distributed to Anchor's customers of refined petroleum products. We computed the initial volumetric factor by dividing $3,600,000 ($9,000,000 x .40 = $3,600,000) by the total volume of covered products sold by the firm during the consent order period (513,589,086 gallons).

the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. See *Marion Corp.*, 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end users need only document their purchase volumes of Anchor products to demonstrate that they were injured by the alleged overcharges.

b. *Regulated firms and cooperatives.* Public utilities, agricultural cooperatives, and other firms whose prices are regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms routinely would have passed through price increases to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. See, *e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*); *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases by cooperatives that were subsequently resold to non-members will generally not be covered by this presumption.

c. *Reseller and retailer small claims.* We will presume that a reseller or retailer seeking a refund of $10,000 or less, excluding accrued interest, was injured by Anchor's pricing practices. Claimants requesting refunds based on purchases of up to 1,440,507 gallons of Anchor products fall into this category. In past proceedings, the OHA has generally established the small claims threshold at $5,000. However, for a number of reasons, in this proceeding we conclude that a $10,000 small claims threshold is a more equitable solution.

The volumetric calculated in this proceeding, *i.e.*, $0.006942, is relatively high compared to volumetric factors adopted in other Subpart V special refund proceedings. We applied this factor to the customer purchase volume information provided to us by Anchor and found that a very substantial number of the refunds that are available to claimants in the Anchor proceeding fall between $5,000 and $10,000. As a consequence, a disproportionately large number of Anchor customers will be required to make a full demonstration of injury in order to receive the full volumetric refund for which they qualify. Despite the size of these refunds, the purchasers involved are nonetheless relatively small entities that are unlikely to have maintained sophisticated systems of records. For the same reason, in the absence of actual records, these entities are also unlikely to have the resources to assemble the data necessary to an alternative showing of injury. See, *e.g., Agway/Davis Oil Co.*, Case No. RF324-28 (May 24, 1991). Moreover, the consent order refund period ended more than ten years ago, records dating back as many as eighteen years may be required for a full demonstration of injury—and records of this age are difficult to assemble under the best of circumstances. In a number of other proceedings, we have encountered this situation and have concluded that the interests of prospective refund applicants and those of the Department are best served by establishing the small purchaser injury presumption at the $10,000 level rather than $5,000. See, *e.g., Texaco Inc.*, 20 DOE ¶ 85,147 (1990). We will adopt a $10,000 small purchaser injury presumption level in the Anchor refund proceeding as well. A small claimant that wishes to claim a refund below this level need only document the volumes of products it purchased from Anchor. See *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069, at 88,210 (1984). Resellers and retailers of Anchor products that are seeking refunds in excess of $10,000 must follow the procedures that are outlined below in Section 2.

d. *Resellers and retailers filing mid-level claims.* In lieu of making a detailed showing of injury, a reseller claimant whose allocable share exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 40 percent of its allocable share up to $50,000.[10] The use of this presumption reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed economic analysis in order to determine product-specific levels of injury. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,381, at 88,737 (1987), we determined that based upon the available data, it was accurate and efficient to adopt a single presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach to be sound in the absence of more detailed information regarding injury, and we therefore will adopt a 40 percent presumptive level of injury for all medium-range claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Anchor refined petroleum products during the consent order period in order to be eligible to receive a refund of 40 percent of its total volumetric share, or $10,000, whichever is greater.

e. *Spot purchasers.* Fourth, resellers and retailers that were spot purchasers of Anchor products, *i.e.*, firms that made only sporadic, discretionary purchases, are presumed not to have been injured and, consequently, generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable discretion as to where and when to make a purchase and, therefore, would not have made a purchase unless it was able to recover the full amount of its purchase price, including any alleged overcharges, from its customers. See Vickers at 85,396–7. A spot purchaser can rebut this presumption by demonstrating that its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. *See, e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

f. *Consignees.* Finally we will presume that consignees of Anchor products were not injured by the firm's alleged pricing violations. *See, e.g., Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). A consignee agent is an entity that sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Anchor's pricing practices. See *Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388, at 88,962 (1986).

2. Non-Presumption Demonstration of Injury

A reseller or retailer whose allocable share is in excess of $10,000 that does not elect to receive a refund under the small claims or mid-level reseller presumptions will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm is required to provide a monthly schedule of its banks of unrecouped increased products costs for products that it purchased from Anchor. Cost banks should cover the period August 19, 1973, through January 27, 1981. If a firm no longer has records of contemporaneously calculated cost banks for products, it may approximate those banks by submitting the following information regarding its purchases of that product from all of its suppliers:

(1) The weighted average gross profit margin that the firm received for the product on May 15, 1973;

(2) A monthly schedule of the weighted average gross profit margins that it received for the product during the period August 19, 1973, through January 27, 1981; and

(3) A monthly schedule of the firm's purchase or sales volume of the products during the period, August 19, 1973, through January 27, 1981.

The existence of banks of unrecovered increased product costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditions forced it to absorb the alleged overcharges. Generally, we will infer this to be true if the prices the applicant paid Anchor were higher than average market prices for the same level of distribution.[11] Accordingly, a claimant

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[10] That is, claimants who purchased between 3,601,268 gallons and 18,006,338 gallons of Anchor refined petroleum products during the consent order period (mid-level claimants) may elect to utilize this presumption. Claimants who purchased more than 18,006,338 gallons may elect to limit their claim to $50,000.

[11] We generally obtain average market price information from Platt's Oil Price Handbook and Oilmanac (Platt's). If price data for a particular product is not available in Platt's, the burden of supplying alternative information will be on the claimant.

attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Anchor for products during the period August 19, 1973, through January 27, 1981.

If a reseller or retailer that is eligible for a refund in excess of $10,000 does not submit cost bank and purchase price information described above, it can still apply for a refund of $10,000 plus accrued interest or 40% of its full volumetric refund, using the medium-range presumption. If, however, a firm provides the above mentioned data and we subsequently conclude that the information it provided demonstrates that the firm was not injured by Anchor overcharges, the firm cannot opt for a full $10,000 refund.

VI. Allocation Claims

We may also receive claims based upon Anchor's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations. See 10 CFR part 211. These applications will be evaluated with reference to the standards set forth in cases such as *Standard Oil Company (Indiana)*, 10 DOE ¶ 85,048; *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984); and *Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575, at 89,049–50 (1988) (*Marathon/RFI*),[12] *aff'd, Research Fuels, Inc. v. DOE*, No. CA3–89–2983–G (N.D. Tex. October 3, 1991). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with Anchor and the likelihood that Anchor failed to furnish petroleum products that it was obliged to supply to the claimant under 10 C.F.R. Part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Anchor may have had to the alleged allocation violation. *See Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989). In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Anchor. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the Consent Order fund that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimants. Finally, since the Consent Order reflects a compromise of the issues involved in the enforcement proceedings against Anchor and the Consent Order amount is less than Anchor's potential liability in those proceedings, we will reduce allocation refunds which would otherwise be disproportionately large. *See Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319, at 88,596 (1989) (refund reduced by the ratio of the settlement fund to the aggregate amount of alleged overcharges).[13]

VII. Distribution of Remaining Funds

Typically, money will remain after all meritorious refund applications have been processed. In that event, the residual funds in the Anchor escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge and Distribution Act of 1986 (PODRA). 15 U.S.C.A. 4501–4507 (West Supp. 1989).

VIII. Applications for Refund

This determination announces that we will now accept Allocations for Refund from purchasers of refined covered products sold by Anchor during the period August 19, 1973, through January 27, 1981. There is no specific application form that must be used; however all Applications for Refund must contain the following information:

(1) A conspicuous reference to the "Anchor Refund Proceeding—Case No. KEF–0120", the applicant's present name and address, the name and address of the applicant during the refund period, and the applicant's taxpayer identification number;[14]

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the application;

(3) An explanation of how the claimant used the Anchor products, *i.e.*, whether the applicant was a reseller, retailer, consignee, end user, public utility, cooperative, etc.;

(4) For each refined covered product, a monthly schedule of the number of gallons that the applicant purchased from Anchor during the August 19, 1973, through January 27, 1981, refund period.[15] If a claimant was an indirect purchaser of Anchor refined covered products, it must also submit the name of its immediate supplier and indicate why it believes the products were originally sold by Anchor;

(5) All relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above in section V, part B;

(6) If the applicant was or is in any way affiliated with Anchor, an explanation of the nature of that affiliation;

(7) A statement as to whether there was a change in ownership of the applicant's firm during or since the refund period. If there was such a change in ownership, the applicant must submit a detailed explanation as well as provide the names and addresses of the previous and subsequent owners;

(8) A statement as to whether the claimant is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d);

(9) A statement as to whether the applicant or a related firm has filed any other Application for Refund in the Anchor proceeding;

(10) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the Anchor proceeding; and

(11) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001."

All Applications for Refund should be sent to: Anchor Refund Proceeding, Case No. KEF–0120, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

All applications must be filed in duplicate no later than 180 days from the date of publication of this Decision and Order in the **Federal Register**. Any claimant that believes that its Application for Refund contains confidential information must submit two additional copies of the application in which the confidential information is deleted, together with a statement specifying why the information is confidential.

It Is Therefore Ordered That

(1) Applications for Refund from the funds remitted to the Department of Energy by Anchor Gasoline Corporation pursuant to the Consent Order finalized on September 22, 1988, may now be filed.

(2) Applications for Refund from the Anchor refined product pool must be filed no

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[12] Marathon/RFI is still under appeal at this time.

[13] If we receive numerous allocation claims, we may adopt a more general formula for calculating refunds based on alleged allocation violations.

[14] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Department of Energy.

[15] Because we will not process claims for less than $15 in principal, an applicant must have purchased at least 2,161 gallons of Anchor refined covered products during the refund period in order for us to consider its application. If an applicant submits estimated purchase volume figures, it must provide a detailed explanation of how it derived the estimates.

later than 180 days from the date of publication of this Decision and Order in the **Federal Register**.

(3) Applications for Refund from the Anchor crude oil pool must be filed no later than June 30, 1994.

(4) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, as provided in Paragraphs (5), (6), and (7) below, the total net current crude oil equity from the Anchor Gasoline Corporation subaccount (Consent Order No. 740S01247W) within the Deposit Fund Escrow Account maintained by the DOE at the Treasury of the United States.

(5) The Director of Special Accounts and Payroll shall transfer $2,052,691.13 in principal, plus appropriate interest, of the funds obtained pursuant to Paragraph (4) above, into a subaccount denominated "Crude Tracking—States," Number 999DOE003W.

(6) The Director of Special Accounts and Payroll shall transfer $2,052,691.12 in principal, plus appropriate interest, of the funds obtained pursuant to Paragraph (4) above, into a subaccount denominated "Crude Tracking—Federal," Number 999DOE002W.

(7) The Director of Special Accounts and Payroll shall transfer $1,026,345.56, plus appropriate interest, of the funds obtained pursuant to Paragraph (4) above, into a subaccount denominated "Crude Tracking—Claimants 4," Number 999DOE010Z.

(8) This is a final Order of the Department of Energy.

Dated: April 2, 1992.

Thomas M. Wieker (for George B. Breznay),

Director, Office of Hearings and Appeals.

[FR Doc. 92-8469 Filed 4-10-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4122-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 13, 1992.

FOR FURTHER INFORMATION OR A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Selective Enforcement Auditing Reporting Requirements (EPA ICR #0011.05; OMB #2060-0064). This ICR requests renewal of the existing clearance.

Abstract: Motor vehicle manufacturers are subject to selective audits of production vehicles to verify that the prototype design can be manufactured and still meet emission requirements. Eighteen manufacturers keep records of emission tests and submit a summary of assembly-line emission testing to the Agency. From this information EPA selects approximately 8 vehicles each year for audits. Manufacturers subject to audits provide the EPA with emission test data, significant events and vehicle data, reports of SEA results, test facility descriptions, SEA laboratory check-out data, SEA test failure reports and an audit failure report. EPA uses this information to ensure that manufacturers follow the prescribed emissions test procedures, that their test equipment accurately measures emissions and that production vehicles conform to Federal emissions requirements when they come off the assembly line.

Burden Statement: The public reporting burden for this collection of information is estimated to average 234 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle manufacturers.

Estimated Number of Respondents: 18.

Estimated Total Annual Burden on Respondents: 4216 hours.

Frequency of Collection: On occasion, quarterly and annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: April 7, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-8447 Filed 4-10-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4121-7]

Meeting of the Grand Canyon Visibility Transport Commission

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing a meeting of the Grand Canyon Visibility Transport Commission (Commission) to be held on May 8, 1992. The Commission was established on November 13, 1991 (see 56 FR 57522 (November 12, 1991)) under section 169B of the Clean Air Act Amendments of 1990 (Act). The primary purposes of this meeting are for the Commission to be presented with the draft workplan prepared by the Grand Canyon Visibility Transport Commission Coordinating Committee (Coordinating Committee) and for the Commission to decide upon a final organizational structure. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92-463, as amended.

DATES: The meeting will be held on May 8, 1992.

ADDRESSES: The meeting will be held at: Arizona State Senate Building, Hearing Room No. 1, 1700 West Washington, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. John Core, Secretary/Treasurer, Grand Canyon Visibility Transport Commission, 1001 SW Fifth Avenue, suite 1000, Portland, Oregon 97204, (503) 220-1660.

SUPPLEMENTARY INFORMATION: The Commission is charged with assessing currently available studies and information pertaining to visibility impairment at the Grand Canyon National Park from sources in the transport region (including potential or projected growth) and is to issue a report to U.S. EPA within four years recommending what measures, if any, should be taken under the Clean Air Act to remedy such impairment. The Administrator of EPA has used his broad discretionary authority under section 169B of the Act to expand the scope of the Commission to include additional class I areas in the vicinity of Grand Canyon National Park—what is sometimes referred to as the "Golden

Circle" of parks and wilderness areas. This includes most of the national parks and wilderness areas of the Colorado Plateau. The Administrator established the visibility transport region to include all or part of the following States: Arizona, California, Colorado, New Mexico, Nevada, Oregon, and Utah, and invited the Governors of those States or their designees to participate as members of the Commission.[1] The Administrator also invited the Chief of the U.S. Forest Service and the Directors of the U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, and National Park Service to represent their Federal agencies on the Commission.

At its first meeting on November 13, 1991, the Commission adopted a set of by-laws and elected officers. At this meeting the Commission also charged the Coordinating Committee, an ad-hoc committee consisting of air quality staff from the participating Federal agencies and the States in the transport region, with developing a workplan to outline the Commission activities over the next four years.

The Coordinating Committee developed a draft workplan and distributed it to interested members of the public for comment. The Coordinating Committee also held a public roundtable to discuss the draft workplan with interested parties (see 57 FR 5447 (February 14, 1992)). The Coordinating Committee has revised the draft workplan to incorporate some of the comments and has also prepared a document responding to all of the comments received. The revised workplan and response to comments document will be made available after the draft workplan is adopted by the Commission.

The Commission has also approved mechanisms for the participation of the public in its activities. At its first meeting, the Commission approved the establishment of a public advisory committee, allowed for the participation of the public on any technical subcommittees established by the Commission, and has allowed for the submittal of public comments at its meetings.

Membership on any committee will be open to qualified persons from industry, environmental, and research/academic organizations, as well as qualified members of the general public. Although the Commission will accept applications at their May 8, 1992 meeting, the number of available positions will be limited and interested persons are urged to send a resume of their qualifications to Mr. John Core, Secretary/Treasurer, Grand Canyon Visibility Transport Commission, 1001 SW Fifth Avenue, suite 1000, Portland, Oregon 97204 by April 24, 1992.

[1] The Administrator also invited the Governor of the State of Idaho to participate on the Commission. The Governor of Idaho has declined to participate on the Commission at this time.

TYPE OF MEETING: This meeting will be open to the general public.

AGENDA: The meeting is scheduled to begin at 1 p.m. The topics to be addressed include:

(1) A presentation of the revised draft workplan;

(2) Acceptance of the public comments received on the draft workplan;

(3) Discussion and adoption of the revised draft workplan;

(4) A presentation on the recommended organizational structure of the Commission; and

(5) Discussion on establishing a public advisory committee to the Commission and a review of public advisory committee nominations.

Dated: April 2, 1992.

David P. Howekamp,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 9.

[FR Doc. 92-8448 Filed 4-10-92; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATES: Comments must be received on or before May 28, 1992. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Copies of the proposed report forms, the request for clearance (Standard Form 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Clearance Officer

Margaret P. Ulmer, Office of Management; 1801 L Street, NW., Washington, DC 20507; Telephone (202) 663-4279.

OMB Reviewer

Joseph Lackey, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, Office of Management and Budget; New Executive Office Building—room 3208; Washington, DC 20503; Telephone (202) 395-7316.

Type of Request: Extension (No change).

Title: Elementary-Secondary Staff Information EEO-5.

Form Number: EEOC FORMS 168A and 168B.

Frequency or Report: Biennially.

Type of Respondent: Public elementary and secondary school districts and systems with 100 or more employees and a sample of those districts and systems with 15-99 employees.

Standard Industrial Classification (SIC) Code: 821

Description of Affected Public: State or local governments

Response: 58,509.

Reporting Hours: 292,545.

Federal Cost: $60,000.00.

Applicable under Section 3504(h) of Public Law 96-511: Not applicable.

Number of Forms: 2.

Abstract-Needs/Users: EEO-5 data are used by EEOC to investigate charges of discrimination against employers in public elementary and secondary school districts and systems. Data are shared with the Department of Education (Office for Civil Rights and the National Center for Education Statistics) and the Department of Justice. EEO-5 data are also shared with approximately 23 State and 56 local FEPC agencies.

Dated: April 6, 1992.

For the Commission.

Kassie A. Billingsley,

Acting Management Director, Office of Management, Equal Employment Opportunity Commission.

[FR Doc. 92-8443 Filed 4-10-92; 8:45 am]

BILLING CODE 6570-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Applications for Deposit Insurance

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Statement of policy.

SUMMARY: This statement combines into one document the Corporation's policy regarding the granting of deposit insurance to proposed new depository institutions and operating non-FDIC insured institutions, incorporates the Corporation's standards for granting deposit insurance to institutions for whom the FDIC is not the primary federal regulator, formalizes standards for proposed new depository institutions formed for the sole purpose of acquiring assets and assuming liabilities of an insured institution in default and clarifies certain issues contained in the policy statement regarding deposit insurance. This statement of policy replaces the statements of policy titled "Applications for Deposit Insurance" adopted in 1980 and "Applications for Federal Deposit Insurance by Operating Non-FDIC Insured Institutions" adopted in 1987. The policy establishes the standards used by the FDIC in granting deposit insurance and offers guidelines for making application for insured status.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Associate Director, Telephone (202) 898–8918, Jesse G. Snyder, Assistant Director, Telephone (202) 898–6915, or Curtis L. Vaughn, Examination Specialist, Telephone (202) 898–6759, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Corporation presently has two policy statements addressing applications for federal deposit insurance. One adopted in 1980, primarily addresses applications for deposit insurance for proposed new banks. The other, adopted in 1987, addresses only applications by operating non-FDIC insured institutions. The subject statement addresses applications filed by proposed new depository institutions and operating non-FDIC insured institutions.

This policy statement reflects the FDIC's amended responsibility to grant or deny federal deposit insurance for all insured depository institutions. The policies enuciated apply to all proposed institutions whether they propose to operate under a State, Federal or National charter.

Prior to the issuance of this statement of policy, the FDIC had not documented its procedures for granting insurance to proposed new depository institutions formed for the sole purpose of acquiring a failed insured institution. This statement recognizes the Corporation's practice of modifying its policies in these cases and requiring a minimum Tier I capital to assets ratio of 4% which may be augmented by an adequate allowance for loan and lease losses.

The new policy statement for granting deposit insurance to operating institutions now incorporates the Corporation's concerns over the sensitivity of the institution to movement in interest rates, a requirement for a full scope audit prior to submitting an application for all institutions, and limits on the use of powers granted under state statute.

Changes worthy of note in the statement addressing proposed new depository institutions follow. These modifications are generally an updating of information or clarification of areas where questions have arisen.

The required minimum initial capitalization for proposed new depository institutions has been increased from $750,000 to $2,000,000, reflecting the Corporation's recent experience in which a minimum of $2,000,000 is needed to capitalize a new operation unless compelling circumstances warrant consideration of a lesser amount. Furthermore, it is expected that the initial capitalization should be sufficient to provide a ratio of Tier I leverage capital to total estimated assets of at least 8% at the end of the third year of operation. In addition, the depository institution is expected to maintain an adequate allowance for loan and lease losses. This represents a change from the previous standard of 10% total capital to estimated assets. The revised standard reflects the capital definitions presently used by the federal financial institution regulators.

In order to address the risk to the fund that may be present by ownership changes in holding companies and by a weakened financial condition of a holding company, the Corporation has affirmed its policy that the holding company financial condition must be able to support the operations and provide capital for a newly chartered institution and has required that proponents advise the Corporation of any significant changes of ownership of the holding company. The FDIC has also emphasized that organizers who are not affiliated with holding companies are expected to demonstrate the ability to provide ongoing financial support of the institution.

From time-to-time, applicants have asked how the Corporation would view an application wherein the organizers, or select individuals, were offered stock at a price lower than the offering price to other subscribers. This statement includes the policy that all stock of a particular class should be offered for the same price. It is not believed appropriate for insiders to experience immediate stock appreciation at the expense of other stockholders. Furthermore, any stock option plans or stock bonuses for insiders should be fully disclosed to all shareholders and the length of these agreements should be limited.

An annual audit by an independent certified public accounting firm is an integral part of the safe and sound management of a depository institution. The statement includes the FDIC expectation that proponents commit their depository institution to obtain an independent audit for at least the first five years after deposit insurance coverage is granted.

Powers of state chartered depository institutions are now limited by federal statute. The policy statement makes clear that applicants shall agree not to exercise prohibited nonbanking powers if deposit insurance is granted.

The threshold level for designation of major shareholders is increased from 5% to 10% ownership to reflect consistency with standards of other Federal regulators. The changed standard will continue to require financial and biographical reporting and notification of changes of major shareholders who have control ownership or potential for control ownership while reducing the reporting burden on organizers.

Because this is a policy statement and not a regulation, each application will be considered on its own merits. These guidelines inform the public of the standards that will be considered. Additionally, the major changes represented by this new policy are a mere incorporation of standards that are already being used or a reflection of changes in other matters which received public discussion. For these reasons the statement of policy is being issued in final form.

Applications for Deposit Insurance

Introduction

The granting of deposit insurance confers a valuable status on an applicant; its denial, on the other hand, may have serious adverse competitive consequences and, in the case of a new bank, may effectively preclude entrance into the banking business. The Board of Directors of the Corporation is charged by statute with the responsibility of acting upon property completed applications for Federal deposit insurance by all depository institutions [1]

[1] In the case of any interim Federal depository institution that is chartered by the appropriate Federal banking agency and will not open for business, the depository institution shall be an insured depository institution upon the issuance of the institution's charter by the agency. Any depository institution whose insured status is continued pursuant to Section 4 of the Federal Deposit Insurance Act is not required to apply to continue said insured status.

including any national bank, District bank, state bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as industrial bank), Federal savings association, state savings association, building and loan association, savings and loan association, homestead association, cooperative bank or any other banking institution which is engaged in the business of receiving deposits, other than trust funds. An institution, which wishes to continue its insured status when converting from a mutual to a stock form of ownership by the chartering of an interim savings association under the provisions of section 10(o) of the Home Owners' Loan Act, also must file an application with the FDIC for deposit insurance. An applicant which is or, at the time insurance would become effective, will be a bank or a savings association has a statutory right to apply for deposit insurance and to obtain full consideration of its application by the Corporation in light of all relevant facts and without prejudice. Federal deposit insurance is not mandatory for all depository institutions. It is up to a given institution's chartering authority to require that an institution apply for deposit insurance.

Procedures

Any party desiring to apply for deposit insurance should obtain forms and instructions from and file an application with the Regional Director of the FDIC Division of Supervision Region in which the depository institution or proposed depository institution is or will be located. Organizers of proposed new depository institutions are urged to simultaneously file applications with both the FDIC and the appropriate chartering authority. If approval of the chartering authority is necessary for an operating noninsured institution to become insured, applications should be filed simultneously. It is the policy of the FDIC to minimize the burden of filing to the applicant. Therefore, information that is provided to the chartering authority that is also needed as part of the deposit insurance application may be provided to the FDIC by appending a copy of it to the FDIC application. The FDIC will investigate the proposal as soon as possible and, where appropriate, every effort will be made to coordinate the FDIC's investigation with investigations by other regulators. Final action may be taken by the Corporation prior to final action by other regulatory authorities only in those cases in which there is no material disagreement on the action to be taken. Applications which are filed simultaneously will also permit joint publication of public notice rather than two separate publications.

The procedures governing the administrative processing of an application for deposit insurance are contained in part 303 of the Corporation's Rules and Regulations (12 CFR part 303). An application will not be processed until it is complete with respect to the specific features covered therein as well as the basic information requested in the application form. An application submitted without all the information necessary for processing may be returned to the proponents. Notification of the approval or denial of an application will be provided. The applicant must satisfy all terms of a conditional approval prior to deposit insurance becoming effective. Under § 303.6(e), within 15 days of receipt of notice that its application has been denied, an applicant may petition the Board of Directors for reconsideration of the application.

The policies contained herein are applicable for all proposed new depository institutions and operating institutions applying for deposit insurance with the exception of institutions whose application is submitted for the sole purpose of acquiring assets and assuming liabilities of an insured institution in danger of default. Policies are modified in those situations to reflect the urgent nature of the transaction. Guidance for these situations is contained in a separate section of this policy statement.

Proposed New Depository Institutions

In considering applications for deposit insurance for a proposed new depository institution, the Corporation must evaluate each application in relation to the factors prescribed in section 6 of the Federal Deposit Insurance Act (hereafter the "Act") (12 U.S.C. 1816). Those factors are: The financial history and condition of the depository institution, the adequacy of its capital structure, its future earnings prospects, the general character and fitness of its management, the risk presented by such depository institution to the Bank Insurance Fund or the Savings Association Fund, the convenience and needs of the community to be served by the depository institution, and whether its corporate powers are consistent with the purposes of the Act. If all of these statutory factors plus the considerations required by the National Historic Preservation Act and the National Environmental Policy Act of 1969 are resolved favorably, the applicant may receive deposit insurance. In deciding whether to grant deposit insurance, the Corporation may conduct examintions and/or investigations to develop essential information and to protect itself against unwarranted risk.

The Corporation has formulated certain guidelines for admission which are designed to ease administrative problems, prevent arbitrary judgment, and assure uniform and fair treatment to all applicants. A discussion of these guidelines follows.

Statutory Factors

1. Financial History and Condition

Proposed and newly organized depository institutions have no financial history to serve as a basis for determining qualifications for deposit insurance. Thus, the primary areas of consideration under this statutory factor are investment in fixed assets, including leasing arrangements, insider transactions, and the ability to provide financial support for the new institution. Lease transactions shall be reported in accordance with Financial Accounting Standards Board Statement 13 ("Accounting for Leases"). Applicants are expected to provide procedures, security devices, and safeguards which are at least equivalent to the minimums specified in the Bank Protection Act of 1968 (12 U.S.C. 1881–1884).

(a) Investment in Fixed Assets and Leases—The applicant's aggregate direct and indirect fixed asset investment, including lease obligations, must be reasonable in relation to its projected earnings capacity, capital and other pertinent bases for consideration. Applicants should not purchase any fixed assets or enter into any noncancelable construction contracts, lease agreements or other binding arrangements related to the proposal unless and until the Corporation approves the application.

(b) Insider Transactions—Any financial arrangement or transaction involving the applicant and one or more of its organizers, directors, officers, 10%-or-more shareholder, and their associates and interests (hereafter referred to as "insiders") should ordinarily be avoided. If there are arrangements or transactions of that type, the applicant must demonstrate clearly that (1) any proposed transactions with insiders are made on substantially the same terms as those prevailing at the time for comparable transactions with non-insiders and do not involve more than normal risk or present other unfavorable features to

the applicant depository institution; (2) any business dealing must be intended for the benefit of the depository institution and must not be entered into by the depository institution as an accommodation for the benefit of the insider; and (3) the transaction must be approved in advance by a majority of the depository institution's incorporators. In addition, full disclosure of any arrangements with an insider must be made to all proposed directors and prospective shareholders.

Whenever any transaction between the applicant and an insider involves the purchase of real property or a construction contract, the purchase price must be supported by an independent appraisal or evaluation, or, in the case of a construction contract, by competitive bids. Further, with respect to any lease arrangement between the applicant and an insider, the applicant must submit reliable evidence showing that the lease arrangement is as beneficial to the applicant as the purchase of the property and direct ownership and is on terms comparable to a similar lease arrangement with a non-insider.

(c) Ongoing Financial Support—Organizers of a proposed new depository institution, including holding companies, must demonstrate that they, either through their own resources or through the financial markets, have sufficient financial ability to support the new institution's operations and to provide capital when needed.

2. Adequacy of the Capital Structure

The basic benchmark for evaluating the adequacy of the capital structure of a new or proposed depository institution is that it should have an initial capitalization sufficient to provide a ration of Tier 1 capital (as defined in the appropriate capital regulation of the institution's primary Federal regulator) to total estimated assets of at least 8% at the end of the third year of operation. In addition, the depository institution is expected to maintain an adequate allowance for loan and lease losses. Initial capital should normally be in excess of $2,000,000, net of any organizational expenses that will be charged to the bank's capital after it commences business. Applicationss that propose net initial capital of less than $2,000,000 will be considered only if the applicant can clearly demonstrate that the proposed capital is sufficient to support the projected volume and type of business. For example, a lower capital level might be appropriate with the estabishment of a new depository institution in a rural area with services where the deposit base potential is limited and the cost of doing business is low. In those cases where the originally proposed capital level is unacceptable, approval of the application may still be granted but only on the condition that the capital level be increased to an acceptable level prior to commencement of business. Depending on the nature of the proposed institution's business, the potential for growth and the competitive environment, substantially greater initial capital levels may be appropriate.

The adequacy of the capital structure of a newly organized depository institution is closely related to its deposit volume, fixed asset investment and the anticipated future growth in liabilities. Deposit projections made by the applicant must, therefore, be fully supported and documented. Projections should be based on established growth patterns in the specific market, and initial capitalization should be provided accordingly. Special purpose banks should provide projections based on the type of business to be conducted and the potential for growth of that business. It is emphasized that the $2,000,000 initial capitalization is a minimum.

Stock financing arrangements will also be carefully reviewed. Financing arrangements to purchase stock will be considered acceptable only if the individual financing the stock can clearly demonstrate the ability to service the debt without undue reliance on dividends or other forms of compensation from the applicant. Ordinarily, direct or indirect financing by directors, officers and 10% or more shareholders of more than 75% of the purchase price of the stock subscribed to by any one individual, or aggregate financing of stock subscriptions in excess of 50% of the total capital offered, is presumed to be excessive. It may result in denial of the application, unless support and justification for exceeding these amounts are furnished to and considered acceptable by the Corporation. No loans for stock purchases are to be refinanced by the applicant. No dividends are to be paid until all initial losses have been recaptured, an appropriate allowance for loan and lease losses has been established, and overall capital is adequate. Deposits or other funds of the proposed depository institution at correspondent banks are not to be used as compensating balances for loans to insiders. It should be noted that Federal Reserve Regulation O (12 CFR part 215) expressly addresses preferential loans to insiders of either institution where a correspondent bank relationship exists as well as the opening of a correspondent account where a prior insider preferential loan relationship exists between the depository institutions (12 U.S.C. 1972).

Subordinated debt or other Tier II elements will not ordinarily be considered as part of the capital structure in evaluating capital adequacy of a proposed or newly organized depository institution.

When securities are sold to the public, the disclosure of all material facts is essential. A copy of any offering circular prepared by the applicant, together with the subscription agreement, is to be submitted for review. It is anticipated that all stock of a particular class in the initial offering will be sold at the same price. Insiders should not be offered stock at a price more favorable than the price for other subscribers as it is not deemed appropriate for insiders to experience immediate stock appreciation at the expense of other subscribers who paid a greater price for their stock. A price disparity provides organizers with a means to gain control disproportionate to their investment, creating a situation which promotes excessive risk taking. Insiders who perform specific services in conjunction with the organization of the depository institution should receive proper remuneration for their services with the fees charged to organizational expenses. Any stock option plans or stock bonuses for insiders should be fully disclosed to all shareholders, and the length of these agreements should be limited but in no case should they exceed ten years. It is anticipated that these options or bonuses will be tied to specific performance and will be limited to active management of the institution.

3. Future Earnings Prospects

Before approving an application for deposit insurance submitted by a new or proposed depository institution, it is important that the Corporation has some assurance that the new institution can be operated profitably. It is, therefore, incumbent upon the organizers to demonstrate through realistic and supportable estimates that, within a reasonable period after commencement of business (normally three years), the earnings of the applicant will be sufficient to cover all operating expenses, losses, and charge-offs, and to provide a reasonable profit. (In estimating expenses, the applicant should provide for the cost of blanket bond coverage and the establishment of an adequate allowance for loan and lease losses and take into consideration the effects of income taxes on earnings.)

The applicant must also maintain its books and records in accordance with the principles of accrual accounting.

4. General Character and Fitness of the Management

The quality of an applicant's management is vital and is perhaps the single most important element in determining its eligibility for deposit insurance. To satisfy the Corporation's criteria under this factor, the evidence must support a management rating which, in an operating institution, would be tantamount to a number 2 rating or better under the Uniform Bank Rating System.[2] Since in most instances the management of a proposed or newly organized institution will not have an operating record as a functioning unit, the management rating essentially becomes a question of directly evaluating the individual directors, officers and, in appropriate cases, 10%-or-more shareholders and arriving at a composite overall rating premised upon the individual analyses. Individual directors and officers will be evaluated largely on the basis of the following: (1) Financial institution and other business experience; (2) proposed duties and responsibilities in the institution; (3) financial responsibility; (4) reputation for honesty and integrity; and (5) familiarity with the economic life, banking needs, and general character of the community in which the depository institution is to operate. The identity and qualifications of the proposed full-time chief executive officer should be made known to the FDIC as soon as possible, preferably when the application is filed with the Regional Office. Among other qualifications, the chief executive officer is expected to be a qualified and experienced lending officer. If not, an explanation should be provided and the name of the proposed lending officer should be made known to the FDIC at an early date. While the investigation of the application by the FDIC may be commenced and conditional approval granted, it is difficult to properly assess management without the identity and qualifications of the chief executive officer and, if applicable, the primary lending officer. Proponents must advise the Corporation, in writing, if any change in the directorate, active management, or in the ownership of stock of 10% or more of the total shares of either the depository institution or its holding company is made prior to opening.

Proposed directors, principal officers and 10%-or-more shareholders must file financial and biographical information in connection with the deposit insurance application, and the Corporation may request a report from the Federal Bureau of Investigation or other investigatory agencies on these individuals. Fingerprinting of individuals may be required. Background checks conducted by other Federal financial institution regulators in connection with charter or Federal Reserve membership applications are generally adequate for the FDIC if the FDIC is notified by the other regulators of instances in which further investigation is warranted. In the event any present or prospective director, officer, employee, controlling stockholder or agent of the applicant has been convicted of any criminal offense involving dishonesty or breach of trust or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution of such offense, the applicant must obtain the Corporation's written consent, under section 19 of the Act (12 U.S.C. 1829), before any such person may serve in one or more of those capacities. Guidelines regarding section 19 applications may be obtained from the appropriate FDIC Regional Office. Timely processing of such applications is important but if the matter is not resolved during organization, opening may be delayed.

Proponents should be cognizant of the prohibitions against interlocking management relations which are applicable to depository institutions (banks, savings associations, mutual savings banks, and credit unions) and depository holding companies (bank and savings associations holding companies) and which are contained in the Depository Institution Management Interlocks Act (12 U.S.C. 3201).

All new or proposed depository institutions shall provide at least a five-member board of directors. The FDIC expects that a majority of the directors will reside in or have significant business interests, other than the proposed depository institution, in the local area which generally will be considered to be no more than 100 miles from the location of the proposed depository institution.

The Board of Directors of the Corporation has adopted a statement of policy regarding legal fees and other expenses incident to applications for deposit insurance, consent to establish branches or relocate main or branch offices, and mergers. In brief, this policy states that the commitment to or payment of unreasonable or excessive legal fees and other expenses incident to an application is considered by the Corporation to reflect adversely upon the management of the applicant bank, irrespective of whether such actions have been formally ratified or otherwise approved by the incorporators or shareholders. Legal fees and other organizational expenses incurred or committed to should be fully supported to allow for a review by the Corporation for reasonableness. A copy of this statement of policy may be obtained from the appropriate Regional Office.

An insured depository institution should at all times maintain sufficient fidelity bond coverage on its active officers and employees to conform with generally accepted industry practices and should at all times maintain an excess employee dishonesty bond in the amount of $1 million or more if the primary blanket bond coverage is less than $1 million. Fidelity coverage may be costly and difficult to obtain and new institution proponents may wish to contact one or more insurers regarding the coverages available and the estimated cost. A binder or commitment letter from an insurer will facilitate processing of the application; however, if such is not obtainable, approval of the application may be conditioned upon acquisition of adequate fidelity coverage prior to opening for business.

Applications are expected to develop appropriate written investment, loan, funds management and liquidity policies prior to commencing business.

Establishment of an acceptable audit program is required for proposed new depository institutions. The FDIC believes that an annual audit by an independent public accountant should be an integral part of the safe and sound management of a depository institution. As a result, applicants for deposit insurance coverage are expected to commit their depository institution to obtain an audit by an independent public accountant annually for at least the first five years after deposit insurance coverage is granted. The FDIC may determine [3] on a case-by-case basis than independent audit is unnecessary where an applicant can demonstrate that the benefits derived from an external audit can be substantially provided by internal expertise or other outside sources, or where the applicant is owned by another company and will undergo an audit performed by an independent public accountant as part

[2] A 2 rating under the Uniform Rating System is generally indicative of a satisfactory record of performance in light of the institution's particular circumstances.

[3] In a situation in which the FDIC is not to be the primary Federal regulator, these determinations will be made in consultation with the primary Federal regulator.

of an audit of the consolidated financial statements of its parent company.

5. The Risk Presented to the Bank Insurance Fund or Savings Association Insurance Fund

This factor is generally intended to be interpreted broadly. For example, this factor may be resolved unfavorably based on an unsound business plan. In its first years of operations, a new depository institution is the most vulnerable to becoming involved in high risk activities in an attempt to establish market share, attain growth, and provide for profitable operations. The Corporation expects that an applicant will submit a business plan commensurate with the capabilities of its management and the financial commitment of the organizers.[4] Applicants must demonstrate (i) adequate policies, procedures, and management expertise to operate the proposed bank in a safe and sound manner; (ii) ability to achieve a reasonable market share; (iii) reasonable earnings prospects; (iv) ability to attract and maintain adequate capital; and (v) responsiveness to community needs. Operating plans that rely on high risk lending, niche marketing, or significant funding from sources other than core deposits or that otherwise diverge from conventional banking will require extensive documentation as to the suitability of the proposed activities from an insured institution. Similarly, extensive documentation of plans is required where markets to be entered are intensely competitive or economic conditions are marginal. Therefore, this factor fills the void where there are serious concerns which give rise to a denial of the application for reasons that do not otherwise clearly fit some other factor.

6. Convenience and Needs of the Community to be Served

The essential considerations in evaluating this factor are the legitimate deposit and credit needs of the community to be served, the nature and extent of the banking opportunity available to the applicant in that location, and the willingness and ability of the applicant to serve those needs. Although the Corporation may consider information developed independently, the applicant may not as a matter of right expect it to do so and should, therefore, itself provide information developed in support of this factor.

The applicant must clearly define the community it intends to serve and provide information on that community, including economic and demographic data and a description of the competitive environment. The applicant should also define the services to be offered in relation to the needs of the community. The proposed institution's Community Reinvestment Act statement, prepared in accordance with the requirements of the institution's primary Federal regulator, plays an integral part in the FDIC's evaluation of the convenience and needs of the community be served.

7. Consistency of Corporate Powers

Pursuant to the provisions of section 24 of the Act, no insured State bank may engage as principal in any type of activity that is not permissible for a national bank unless the FDIC has determined that the activity would pose no significant risk to the appropriate deposit insurance fund and the State bank is, and continues to be, in compliance with applicable capital standards prescribed by its primary Federal banking agency. Similarly, the Home Owners' Loan Act (12 U.S.C. 1464) provides that a State savings association may not engage in any type of activity that is not permissible for a Federal savings association unless the FDIC has determined that the activity would pose no significant risk to the affected deposit insurance fund and the savings association is, and continues to be, in compliance with the fully phased-in capital standards for the association. Applicants shall agree in the application not to exercise prohibited nonbanking powers, whether granted by charter or statute, after deposit insurance has been granted.

Proposed institutions whose primary Federal regulator is to be the FDIC are subject to the provisions of part 332 of the Corporation's Rules and Regulations, which prohibits the exercise of certain powers which are inconsistent with the purposes of the Act, including, among other, guaranteeing or acting as surety for the obligations of others and insuring, guaranteeing, or certifying real estate titles. Also, these applicants may not under any circumstances exercise trust powers without the prior written approval of the Corporation.

Opeating Institutions

This category is for applications for federal deposit insurance submitted by operating noninsured institutions. The Corporation's criteria for evaluating applications submitted by operating institutions are generally the same as those for proposed new depository institutions.

In each instance, the Corporation must consider the financial history and condition of the depository institution, the adequacy of its capital structure, its future earnings prospects, the general character and fitness of its management, the risk presented by such depository institution to the Bank Insurance Fund or the Savings Association Insurance Fund, the convenience and needs of the community to be served by the depository institution, and whether or not the depository institution's corporate powers are consistent with the purposes of the Act.

The condition of an applicant institution will be determined from all available information and will generally include an on-site examination as part of the investigation process. Large or unusually complex organizations should take the time requirements of this process into consideration in planning for consummation of a transaction covered by this policy statement.

Results of the examination should reflect an institution that is fundamentally sound, although some modest weaknesses may exist that are correctable in the normal course of business. The nature and severity of deficiencies found should not be material, and the institution must be stable and able to withstand business fluctuations quite well.

Capital standards will be calculated using financial statements prepared in accordance with the "Instructions—Consolidated Reports of Condition and Income" in use for FDIC-insured institutions at the time. An applicant's capital adequacy will be measured in relation to the minimum capital ratios established in the capital regulations of the institution's primary Federal regulator. Based on an analysis of the type and quality of the institution's assets, the kind of powers exercised, the institution's funding sources, or other factors, an initial capital level higher than the minimum levels prescribed may be required. The analysis will include consideration of such matters as whether the applicant is relatively new,[5] has embarked upon substantive change in powers exercised, or has experienced erratic growth patterns in recent years. Exceptions to these standards are not expected and will be permitted only

[4] Any significant deviation from the business plan submitted within the first three years of operation must be reported by the insured depository institution to the appropriate federal regulator before consummation of the change.

[5] This Statement of Policy provides that the initial capital for a new or proposed depository institution should be sufficient to provide an 8 percent Tier I leverage capital ratio at the end of three years plus an adequate allowance for loan and lease losses. This standard shall also be applied to a recently organized institution applying for insurance.

under very unusual and infrequent circumstances.

As part of the application investigation process, the FDIC will discuss with an applicant its future operating intentions. If any change in its kind or level of activity is expected following or as a result of the approval of its FDIC membership, the applicant may be requested to submit a plan for maintaining adequate capital in the future. An acceptable plan in such circumstances may call for additional capital at inception and/or later as new activities grow or change.

The matter of interest rate sensitivity warrants further attention. An institution's interest rate sensitivity position can have an important impact on earnings and an effect on capital adequacy. Asset/liability maturity (or repricing interval) mismatching can expose institutions to income reductions and even operating losses should interest rates change in a manner not anticipated or planned for by management. This exposure is heightened when capital is inadequate to support the level of interest rate risk and other risk being assumed by the institution. In this case, consideration is given to an institution's operating history and management's demonstrated ability to protect the institution against the risks of exposure through an appropriate asset/liability management policy.

Unless waived in writing by the FDIC, the Corporation expects any applicant to have a full scope audit conducted by an independent public accountant prior to submitting an application, and requires that a copy of the auditor's report be included as part of the application.

Powers of insured State banks are limited pursuant to the provisions of Section 24 of the Act, and powers of State savings associations are limited under the provisions of the Home Owner's Loan Act (12 U.S.C. 1464). If the institution is exercising any powers not authorized under these statutes, the application should contain an agreement and plan for eliminating the activity upon the effective date of the insurance. In unique circumstances, a longer phase-out period may be permitted if agreed to by the FDIC and the primary Federal regulator (as applicable) or the State chartering authority.

Proposed New Depository Institutions Formed for the Sole Purpose of Acquiring Assets and Assuming Liabilities of an Insured Institution in Default

Because of the urgent nature of the transaction, the procedures described above for insuring proposed new depository institutions are modified when the institution is being formed for the sole purpose of acquiring assets and assuming liabilities of an insured institution in danger of default. Such institutions are approved based on the statutory factors contained in section 6 of the Act; however, the procedures for resolving these factors are modified significantly.

The financial history and condition of the institution is determined to a great extent on the quality of assets purchased and the types of liabilities assumed in the transaction. Acquisition of only performing assets and a stable deposit base would require a different level of management expertise and a smaller initial capitalization than would be required if the proposed new institution were acquiring all of the failed institution's assets and were assuming a volatile liability structure.

The minimum capital requirement for these transactions is a ratio of Tier I capital to anticipated total assets of 4%, which may be augmented by an adequate allowance for loan and lease losses. It is emphasized that this is a minimum standard and a higher ratio may be required of certain institutions. The initial capital requirements may be based on estimated retained deposits, but the proposed institution will be required to make a firm commitment to achieve the 4% Tier I ratio shortly after consummation if the volume of retained deposits is underestimated. A realistic projection of deposit runoff must be submitted with any proposal to begin operations with initial Tier I capital that is less than 4% of total deposits to be assumed.

Proponents should contact the FDIC Division of Supervision Regional Office well in advance of their intention to bid on a failing institution. Proposed officers, directors, and 10%-or-more shareholders ordinarily will be required to submit financial and biographical information and a business plan. The Corporation may request a report from the Federal Bureau of Investigation or other investigatory agencies on these individuals. Fingerprinting of individuals may be required.

Due to the time constraints involved with this type of transaction, information submissions and applications will be abbreviated. Generally, a letter request accompanied by copies of applications filed with other Federal or State regulatory authorities will be sufficient. Other information will be requested only as needed by the appropriate FDIC official.

Relationships With Other Federal Regulators

Nothing in these guidelines is intended to supersede requirements of a depository institution's primary Federal regulator. Any differences in requirements between the FDIC and the institution's primary Federal regulator will be resolved during the investigation process.

By Order of the Board of Directors. Dated at Washington, DC this 7th day of April, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-8492 Filed 4-10-92; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 92-13]

Academy Forwarders, Inc., et al. v. Sea-Land Service, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint was served April 8, 1992, which complaint was filed by Academy Forwarders, Inc.; Acorn International Forwarding Co.; Art International Forwarding, Inc.; Caddo International; Cherokee Shipping International, Inc.; Four Winds Forwarding, Inc.; International Services, Inc.; Irelan International Forwarding, Inc.; and Schulzeco, Inc. (collectively designated "Complainants") against Sea-Land Service, Inc. ("Respondent"). Complainants allege that Respondent has violated sections 10(b)(6)(A), (b)(10), and (b)(12) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b)(6)(A), (b)(10), and (b)(12), by failing to publish a containerload rate for household goods shipments in the Trans-Pacific American Flag Berth Operators ("TPAFBO") tariff from Korea to U.S. West Coast ports and denying Complainants the substantially lower containerload rate in the Asia North American Eastbound Rate Agreement ("ANERA") tariff for household goods shipments, including military household goods shipments, while charging other shippers the lower ANERA rate and by canceling out of the TPAFBO tariff a previously effective containerload rate for household goods from Korea to U.S. West Coast ports while continuing to publish such rates for shipments from other Far Eastern origins to U.S. West Coast ports.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing

shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by April 6, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 92-8464 Filed 4-10-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

John David Davenport, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 1, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John David Davenport*, Edmond, Oklahoma; to acquire an additional 0.04 percent of the voting shares of Quail Creek Bancshares, Inc., Oklahoma City, Oklahoma, for a total of 25.01 percent, and thereby indirectly acquire Quail Creek Bank, N.A., Oklahoma City, Oklahoma.

2. *David R. Dickey*, to acquire 15.1 percent; Donald F. Dickey, to acquire 15.1 percent; Jack W. Dickey, to acquire 10.0 percent; Dale R. Hughes, to acquire 5.0 percent; and Arnold F. Parr, to acquire 5.0 percent of the voting shares of United Bank and Trust Company of Norman, Norman, Oklahoma.

Board of Governors of the Federal Reserve System, April 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-8408 Filed 4-10-92; 8:45 am]

BILLING CODE 6210-01-F

Fleet/Norstar Financial Group, Inc., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 1992.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island; to engage *de novo* through its subsidiary, The New York Switch Corporation, Hackensack, New Jersey, in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in Connecticut, Pennsylvania and Vermont.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Allied Irish Banks, p.l.c.*, Dublin, Ireland; to engage *de novo* through its subsidiary, First Maryland Bancorp, Baltimore, Maryland, in making investments in limited partnerships the primary purpose of which is to acquire, construct, or rehabilitate low- and moderate-income housing, which projects qualify for the Low Income Tax Credit under the Internal Revenue Code of 1986 pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in the States of Maryland, Delaware, Pennsylvania, Virginia, and the District of Columbia.

Board of Governors of the Federal Reserve System, April 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-8409 Filed 4-10-92; 8:45 am]

BILLING CODE 6210-01-F

Park Bankshares, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of

a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 5, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Park Bankshares, Inc., Lake Park, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Lake Park, Lake Park, Florida.

Board of Governors of the Federal Reserve System, April 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-8410 Filed 4-10-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Government Auditing Standards Advisory Council Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: The United States General Accounting Office has scheduled a meeting of the Government Auditing Standards Advisory Council on May 20, 1992, from 8:30 a.m. until 3 p.m. at the Sheraton Denver Tech Center Hotel, 4900 DTC Parkway, Denver, Colorado 80237.

The agenda for the meeting will consist of a review of the minutes of the November 1991 meeting, and presentation of issues and discussion thereof.

Any interested person may attend the meeting as an observer.

FOR FURTHER INFORMATION CONTACT: William J. Anderson, Jr., Project Manager, U.S. General Accounting Office, 441 G St., NW., room 6025, Washington, DC 20548 or call (202) 275-9319.

DATE: May 20, 1992.

ADDRESSES: The Sheraton Denver Tech Center Hotel, 4900 DTC Parkway, Denver, CO 80237.

Dated: April 8, 1992.

Donald H. Chapin,

Assistant Comptroller General.

[FR Doc. 92-8384 Filed 4-10-92; 8:45 am]

BILLING CODE *610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Alcohol Abuse and Alcoholism; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of an advisory committee of the National Institute on Alcohol Abuse and Alcoholism in May 1992.

The meeting of the Extramural Science Advisory Board will be devoted to the business of the Board and a discussion of current research activities.

A summary of the meeting and roster of the committee members may be obtained from: Ms. Nancy Colladay, Staff Coordinator, NIAAA, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 16C-14, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443-3860).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Extramural Science Advisory Board, NIAAA.
Meeting Date: May 4-5, 1992.
Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.
Open: May 4, 9 a.m.-5 p.m.; May 5, 9 a.m.-Adjournment.
Contact: Dr. Michael J. Lewis, room 16C-14, Parklawn Building, 301/443-3860.

Dated: April 7, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-8396 Filed 4-10-92; 8:45 am]

BILLING CODE 4160-20-M

Agency for Health Care Policy and Research

Availability of Clinical Practice Guidelines on Acute Pain Management: Operative or Medical Procedures and Trauma and Urinary Incontinence in Adults

The Agency for Health Care Policy and Research (AHCPR) announces the availability of the first of a series of federally-sponsored clinical practice guidelines. Guidelines on "Acute Pain Management: Operative or Medical Procedures and Trauma" and "Urinary Incontinence in Adults" were each developed by private-sector panels of experts under the sponsorship of AHCPR, a component of the Public Health Service. The guidelines were released during separate press conferences held in Washington, DC, on March 5 and 23, respectively. Both guidelines were peer reviewed, and evaluated in clinical settings prior to their release.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) enacted December 19, 1989, added a new title IX to the Public Health Service Act (the Act) that established the Agency for Health Care Policy and Research to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. The AHCPR is to achieve its goals through establishment of a broad base of scientific research and through the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

Section 911 of the Act (42 U.S.C. 299b) established, within AHCPR, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Through this office, AHCPR is arranging for development and periodic review and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and others to assist in determining how diseases, disorders , and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act requires that the guidelines be:

1. Based on the best available research and professional judgment.
2. Presented in formats appropriate for use by physicians, health care practitioners, providers, medical educators, medical review organizations, and consumers of health care; and
3. In forms appropriate for use in clinical practice and educational programs and reviewing quality and appropriateness of medical care.

Section 913 of the Act describes two mechanisms which AHCPR may use for development of guidelines: (1) Convening panels of qualified experts and health care consumers, and (2) awarding contracts to public and private non-profit entities. The AHCPR uses both mechanism.

Section 914 of the Act (42 U.S.C. 299b-3(a)) identifies factors to be considered in establishing priorities for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;

2. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and

3. Reduce clinically significant variations in the outcomes of health care services and procedures.

Availability of Guidelines

The clinical practice guidelines, "Acute Pain Management: Operative or Medical Procedures and Trauma" and "Urinary Incontinence in Adults," are produced in several versions to meet different information needs, including the Clinical Practice Guideline, the Quick Reference Guide for Clinicians, and the Patient Guide. Patient Guides, which are not available in English, also will be produced in Spanish in the near future. The guidelines are available free of charge by writing or calling: AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907, call Toll-Free: 1-800-358-9295.

The AHCPR also is distributing the guideline to physicians, nurses, other practitioners, medical and nursing societies, health professions schools, insurers, consumer groups, and others.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Fact Sheet, "AHCPR-Commissioned Clinical Practices Guidelines," dated January 1992. More detailed information on the guidelines process and criteria for selecting panels is contained in the AHCPR Program Note "Clinical Guidelines Development," dated August 1990. These documents are available from the AHCPR Publications Clearinghouse, at the address and phone number above.

Future Guidelines

Other guidelines are in various stages of development. As the guidelines are completed and released, their availability will be announced.

Dated: April 6, 1992.

J. Jarret Clinton,
Administrator.

[FR Doc. 92-8485 Filed 4-10-92; 8:45 am]

BILLING CODE 4160-90-M

Public Meeting on the Clinical Practice Guideline for Diagnosis and Treatment of Otitis Media in Children

The Agency for Health Care Policy and Research (AHCPR) announces that a public meeting will be held on the clinical practice guideline for Diagnosis and Treatment of Otitis Media in Children. The guideline is being developed by an AHCPR contractor, in conjunction with a panel of experts and health care consumers.

A Notice announcing that AHCPR had awarded three contracts for development of clincial guidelines on otitis media in children, post-stroke rehabilitation, and congestive heart failure; and inviting nominations, on behalf of the contractors, for panels of experts and consumers, was published in the **Federal Register** on December 2, 1991 (56 FR 61252).

A public meeting to address the guideline for the diagnosis and treatment of otitis media in children and to provide an opportunity for interested parties to contribute relevant information and comments will be held on: Monday, May 18, 1992, 9 a.m. to 12 p.m., Bethesda Marriott, 5151 Pook's Hill Road, Bethesda, Maryland 20814, Phone: 301/897-9400.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act) (42 U.S.C. 299-299c-6), which established the Agency for Health Care Policy and Reservice (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act (42 U.S.C. 299b) established, within AHCPR, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Through this office, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 919 of the Act (42 U.S.C. 299b-1) requires that the guidelines be:

1. Based on the best available research and professional judgment;

2. Presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers of health care; and

3. In forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care.

Section 914 of the Act (42 U.S.C. 299b-3(a)) identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods of prevention, diagnosis, treatment, and clinical management, and thereby benefit a significant number of individuals;

2. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and

3. Reduce clinically significant variations in the outcomes of health care services and procedures.

The following topics were selected in 1990 for guideline development:

1. Management of Functional Impairment Due to Cataract in the Adult.

2. Diagnosis and Treatment of Benign Prostatic Hyperplasia.

3. Urinary Incontinence in Adults.

4. Prediction, Prevention, and Early Intervention of Pressure Ulcers.

5. Sickle Cell Disease.

6. Acute Pain Management: Operative or Medical Procedures and Trauma.

7. Diagnosis and Treatment of Depressed Outpatients in Primary Care Settings.

In 1991, the following additional topics were selected for guideline development by panels of experts and consumer representatives arranged for by AHCPR:

1. Management of Cancer-Related Pain.

2. Treatment of Stage II and Greater Pressure Ulcers.

3. HIV Positive Asymptomatic Patient: Evaluation and Early Intervention.

4. Low Back Problems.

5. Development of Quality Determinants of Mammography.

6. Screening for Alzheimer's and Related Dementias.

Also in 1991, three topics were selected for guidelines development by contractors, with assistance from panels of experts and consumer representatives:

1. Diagnosis and Treatment of Otitis Media in Children.

2. Diagnosis and Treatment of Heart Failure Secondary to Coronary Vascular Disease.

3. Post Stroke Rehabilitation.

Responsibilities of the expert panels and contractors, assisted by contract panels, include determination of the

scope of the guidelines, assessment of the available scientific evidence and clinical consensus, and conducting peer review of drafts of the guidelines.

Arrangements for the May 18 Public Meeting on Diagnosis and Treatment of Otitis Media in Children

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. A consortium of three non-profit organizations was awarded a contract to develop the guideline for Diagnosis and Treatment of Otitis Media in Children. The organizations are the American Academy of Pediatrics (AAP), the American Academy of Family Physicians (AAFP), and the American Academy of Otolaryngology-Head and Neck Surgery (AAO–HNS). The AAP is making the administrative arrangements for this public meeting on behalf of the consortium. Individuals and representatives who would like to attend must register with AAP at the address set out below by May 8 and indicate whether they plan to make an oral statement. Those wishing to make oral statements and provide written comments and information should also submit copies of these to AAP by May 8. If more requests to make oral statements are received than can be accommodated between 9 a.m. and 12 p.m. on May 18, the chairperson will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals and providers, health care consumers, product manufacturers, and pharmaceutical manufacturers, is presented. Those who cannot be granted their requested speaking time because of time constraints can be assured that their written comments will be considered by the panel in developing the guideline.

Registration should be made with and written materials submitted to the following address: American Academy of Pediatrics, Attn: Robert Sebring, Ph.D., 141 Northwest Point Blvd., P.O. Box 927, Elk Grove Village, Illinois 60009–0927, Phone: 708/981–6784, Fax: 708/228–5097.

Dated: April 6, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92–8483 Filed 4–10–92; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 92F–0086]

Eastman Chemical Co.; Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Eastman Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of copolyesters containing up to 5 mole percent (7 weight percent) 1,4-cyclohexylene dimethylene terephthalate as the base sheet and base polymer for use in food-contact articles.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4318) has been filed by Eastman Chemical Co., P.O. Box 511, Kingsport, TN 37662. The petition proposes to amend the food additive regulations to provide for the safe use of copolyesters containing up to 5 mole percent (7 weight percent) 1,4-cyclohexylene dimethylene terephthalate as the base sheet and base polymer for use in food-contact articles.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 3, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–8400 Filed 4–10–92; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 92F–0061]

SCM Chemicals; Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that SCM Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the safe use of trimethylolpropane as a pigment dispersant in resinous and polymeric coatings in contact with food.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that petition (FAP 2B4316) has been filed by SCM Chemicals, c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of trimethylolpropane as a pigment dispersant in resinous and polymeric coatings in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 3, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–8399 Filed 4–10–92; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 92N–0166]

Drug Export; Nubain® Injection 10 Mg/ML, 2 ML Ampul

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Du Pont Merck Pharmaceutical Co. has filed an application requesting approval for the export of the human drug Nubain® Injection 10 milligrams per milliliter (mg/mL), 2 mL ampul to the United Kingdom and France transshipped through Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–

305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that The Du Pont Merck Pharmaceutical Co., P.O. Box 80027, Barley Mill Plaza, 4301 Lancaster Pike, Wilmington, DE 19880-0027, has filed an application requesting approval for the export of the human drug Nubain® Injection 10 mg/mL, 2 mL ampul to the United Kingdom and France transshipped through Germany. This drug is indicated for use as semi-synthetic, morphine agonist/antagonist phenantrene-type central analgesic for pain. The application was received and filed in the Center for Drug Evaluation and Research on February 21, 1992, which shall be considered the filing date for purposes of the act. The Du Pont Merck Pharmaceuticals Co. has an approved new drug application for the marketing of Nubain® Injection 10 mg/mL, 1 mL ampul.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 23, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: April 3, 1992.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 92-8362 Filed 4-10-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92E-0026]

Determination of Regulatory Review Period for Purposes of Patent Extension; Foscavir®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FOSCAVIR® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product FOSCAVIR®. FOSCAVIR® (forcarnet sodium) is indicated for the treatment of cytomegalovirus retinitis in patients with acquired immunodeficiency syndrome (AIDS). Subsequent to this approval, the Patent and Trade Office received a patent term restoration application for FOSCAVIR® (U.S. Patent No. 4,215,113) for Aktiebolaget Astra, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated February 27, 1992, advised the Patent and Trademark Office that this human drug product has undergone a regulatory review period and that the approval of FOSCAVIR® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review periods for FOSCAVIR® is 1,709 days. Of this time, 1,337 days occurred during the testing phase of the regulatory review period, while 372 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The Date an Exemption Under Section 505(i) of the Federal Food, Drug, and Cosmetic Act Became Effective

January 22, 1987. The applicant claims January 23, 1987, as the date the

investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 22, 1987, which was 30 days after FDA receipt of the IND.

2. The Date the Application was Initially Submitted With Respect to the Human Drug Product Under Section 505(b) of the Federal Food, Drug, and Cosmetic Act

September 20, 1990. The applicant claims that the new drug application (NDA) for FOSCAVIR® (NDA 20-068) was initially submitted on April 2, 1990, and subsequent parts were filed on April 25, 1990, and September 18, 1990. FDA records indicate that the completed NDA application was submitted on September 20, 1990.

3. The Date the Application was Approved

September 27, 1991. FDA has verified the applicant's claim that NDA 20-068 was approved on September 27, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,126 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 12, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 13, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 6, 1992.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 92-8398 Filed 4-10-92; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Special Project Grants; Maternal and Child Health (MCH) Services; MCH Community Integrated Service Systems (CISS) Set-Aside Program

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of availability of funds.

SUMMARY: The Maternal and Child Health Bureau (MCHB), HRSA, announces that fiscal year (FY) 1992 funds are available for Maternal and Child Health (MCH) Community Integrated Service Systems (CISS) Set-Aside Program grants. To support development and expansion of successful model service delivery strategies, Congress has emphasized six categories of approach in subparagraphs (A) through (F) of section 501(a)(3) of the Social Security Act: Maternal and infant home visiting activities in which, among other services, case management services are provided in the home; activities designed to increase the participation of obstetricians and pediatricians under both the MCH Services Block Grant and Medicaid programs; integrated maternal and child health service delivery (i.e., one-stop shopping) systems; MCH activities operated under the direction of a not-for-profit hospital; MCH activities targeted to serve rural populations; and outpatient and community based services activities (including day care services) for children with special health care needs (CSHCN). The CISS promotion projects are intended to be conducted within the context of overall State efforts to develop comprehensive, community based systems of services and are to focus on unmet needs and service gaps identified in the State's MCH Services Block Grant plan. In the 15 communities in the Nation with HRSA-administered Healthy Start grants, CISS projects must be coordinated with Healthy Start program efforts.

It is anticipated that approximately $6.3 million will be available to support approximately 36 new projects. Award size will vary, averaging $175,000 per grant for a one year budget period. Awards will be made for varying project periods of up to 4 years. Funds for the MCH CISS Set-Aside Program are authorized in fiscal years in which total appropriated funds for the MCH Services Block Grant exceed $600 million. Fiscal year 1992 is the first year since enactment of legislative authority for this set-aside in 1989 that the fiscal conditions for funding have been met. Funds are appropriated by Public Law 102-170. Applicants are advised that continued support of grants awarded under this announcement beyond FY 1992 may be subject to limitations in the authorizing legislation and the appropriation of funds. Projects funded under the MCH CISS Set-Aside Program are selected and administered under the same procedures and practices as are currently in effect with regard to MCH Special Projects of Regional and National Significance (SPRANS) set-aside activities. The regulation implementing the MCH SPRANS Set-Aside Program was published in the March 5, 1986, issue of the **Federal Register** at 51 FR 7726 (42 CFR part 51a).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives and goals of Healthy People 2000, a PHS-led national activity for setting priority areas. The MCH CISS program addresses the Healthy People 2000 objectives related to improving maternal, infant, child and adolescent health and developing service systems for children at risk of chronic and disabling conditions. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0 or Healthy People 2000) (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office Washington, DC 20402-9325 (telephone: 202-783-3238).

DUE DATES: The HRSA, through this notice, invites potential applicants to request and submit an application for funding consideration. The deadline for receipt of applications is June 30, 1992. Requests should specify the project category for which the application is requested. To receive consideration, all applications must be sent to the Chief, Grants Management Branch, Office of Program Support, MCHB, at the address below, and must be received by the close of business on the dates indicated. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Grant applications received or postmarked after the deadline or sent to any other location will not be considered for funding and will be returned to the applicant. Project periods for grantees begin October 1, 1992.

FOR FURTHER INFORMATION CONTACT: John Gallicchio, Chief, Grants Management Branch, Office of Program Support, MCHB, room 18-12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301-443-1440, for application forms, guidelines, and additional information and assistance regarding business management, administrative, or fiscal issues related to the awarding of grants under this announcement. Applications should be submitted on PHS Form 5161-1 (with revised facesheet DHHS Form 424, approved by OMB under control number 0937-0189).

Requests for technical or programmatic information should be directed to: Vince L. Hutchins, M.D., Director, Maternal and Child Health Bureau, HRSA, Room 18-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301-443-2170.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Current title V law specifies a number of programs and projects for which the Secretary is authorized to expend appropriated funds directly. These activities are funded through two distinct Federal "set-asides" under the MCH Services Block Grant, made up of monies obligated directly by the Secretary. The first set-aside, for SPRANS, is designed to fund programs and projects which contribute to improving the health of mothers, children, and CSHCN; MCH research and training; genetic disease testing, counseling and information services; and hemophilia diagnostic and treatment centers. The second set-aside, for the CISS program, is the set-aside covered by this announcement. It was established under section 502(b)(1)(A) of the Act by the Omnibus Budget Reconciliation Act of 1989. It authorizes the Secretary to retain an additional 12.75 percent of amounts appropriated for a fiscal year above $600 million to fund projects employing one or more of the approaches to development and expansion of community integrated service systems set out in subparagraphs (A) through (F) of section 501(a)(3) of the Act:

—Maternal and infant home visiting programs in which, among other services, case management services are provided in the home.
—Projects designed to increase the participation of obstetricians and pediatricians under both the MCH Services Block Grant and Medicaid programs.
—Integrated maternal and child health service delivery (i.e., one-stop shopping) systems.
—MCH centers operated under the direction of not-for-profit hospitals.
—MCH projects to serve rural populations.
—Outpatient and community based services programs (including day care services) for CSHCN.

Purpose

This grant program is intended to support development and expansion of community integrated service systems employing six designated community-oriented strategies which show promise of promoting greater access to family centered, culturally competent, and coordinated care for pregnant women and children. Projects in this category are expected to be integrated into the general plan to improve the health of mothers and children submitted by each State's MCH program in order to receive title V funds. Proposed project activities must be compatible with State efforts to develop comprehensive, community based systems of services to improve the health of women, infants, children, adolescents, and CSHCN. These elements of systems are described more fully in the program guidance included in the application packet.

Priorities

Grants will be awarded so that each of the six designated strategies is represented. At the request of Congress, priority will be given to funding projects which meet the broader systems-building requirements established for this program through use of the following two strategies: (1) Integrated service delivery systems featuring one-stop shopping and employing the model application form recently developed for maternal and child assistance programs; and (2) maternal and infant home visiting programs. This means that in determining scores for ranking the funding of applications, merit reviewers will assign scores based on the extent to which applicants address these program priorities.

Availability of Funds

Approximately $6.3 million is available under the MCH CISS Set-Aside Program to support up to 36 projects at an average of $175,000 per award for a one year budget period. Awards will be made for project periods of up to 4 years. Applicants are advised that continued support of grants awarded under this announcement beyond FY 1992 may be subject to conditions in the authorizing legislation and the appropriation of funds.

Special Concerns

Projects supported under the MCH CISS Set-Aside Program are expected to be part of community-wide, comprehensive initiatives, to reflect appropriate coordination of primary care and public health activities, and to target HRSA resources effectively to fill gaps in the Nation's health system for mothers and children. This applies specifically to projects in the 15 communities in the Nation which have received grants from HRSA under the President's Healthy Start initiative. Grantees in these communities providing services related to activities of a Healthy Start program are expected to coordinate their projects with Healthy Start program efforts. Healthy Start communities include: Aberdeen Area Indian Reservation, NE/ND/SD; Baltimore, MD; Birmingham, AL; Boston, MA; Chicago, IL; Cleveland, OH; Detroit, MI; Lake County, IN; New Orleans, LA; New York, NY; Oakland, CA; Philadelphia, PA; Pittsburgh, PA; PeeDee Region, SC; Washington, DC.

In its administration of the MCH Services Block Grant, the MCHB places special emphasis on improving service delivery to women and children from culturally identifiable populations who have been disproportionately affected by barriers to accessible care. This means that MCH CISS projects are expected to serve and appropriately involve in project activities members of ethnoculturally distinct groups, unless there is compelling programmatic or other justification for not including either women or persons from culturally distinct populations. The MCHB's intent is to ensure that project outcomes are of benefit to culturally distinct populations and to ensure that the broadest possible representation of culturally distinct and historically underserved groups is supported through programs and projects sponsored by the MCHB.

Consistent with the statutory purpose and with particular attention to involvement of women and persons from culturally distinct populations, the Department of Health and Human Services will review applications as competing applications and will fund those which, in the Department's view, best meet the purposes of the MCH CISS Set-Aside Program and address the achievement of applicable Healthy People 2000 objectives in communities with demonstrated need.

Eligible Applicants

Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to

apply for MCH CISS Set-Aside Program project grants. Projects are intended to facilitate the development of systems of services in communities. However, because the projects need to be consistent with State systems development efforts and because State assistance will be required to improve local systems, a defined role for the State MCH/CSHCN agency and evidence of its support are essential. To promote community/State partnerships, an indication that projects will involve such partnerships is also necessary. Governmental and nonprofit community agencies and State agencies are encouraged to apply.

Review Criteria

Review panels will evaluate applications for awards. Specific requirements for each project category will be reflected in the program guidance included in the application packet. The following review criteria will be used to review all applications:

—The importance of the proposed project to the advancement of maternal and child health. The applicant provides evidence that the purpose, goals and objectives of the proposal are important within the community project area, are consistent with the needs assessment in the State's MCH Services Block Grant plan and may have application in other States or regions.

—Compatibility of proposed project activities with State efforts to develop comprehensive, community based systems of services with regard to: (a) Population(s) served, (b) community based services; (c) comprehensive services; (d) coordinated services; (e) family centered care; and (f) culturally competent care.

—Clarity of the health problem statement and quality of the analysis of the problems and contributing factors. The applicant should identify the problem to be addressed and its potential for improving the health status of pregnant women and/or infants and children. The range of the important characteristics of the problem and its causal or contributing factors should be described.

—Clarity of the goals of objectives of the project and their linkage to the identified problem. The project objectives should be time-framed and measurable. They should have a reasonable potential for impacting the stated problem.

—The quality and feasibility of the project plan or methodology and its relation to the project's goals and objectives. The applicant should describe the approaches and activities that will be used to achieve the objectives. The approaches should be technically sound and appropriate for the project goals and objectives.

—The quality of the applicant's plan for tracking project activities. The proposed methods for tracking each project activity and collecting the appropriate information are feasible and economical.

—The quality of the applicant's plan to measure achievement of project goals and objectives.

—The capacity of the applicant to carry out the proposed project. Capacity of the applicant refers to qualified personnel and other resources sufficient to carry out the proposed project methodology. The budget should reflect appropriate financial support for the proposed project activities for the project period. Justification of each budget item should be provided. All budget items should be realistic and adequate to plan, implement and evaluate the project.

—The extent to which the project places special emphasis on improving service delivery to women and children from culturally identifiable populations who have been disproportionately affected by barriers to accessible care and the extent to which the project ensures that members of culturally distinct groups are appropriately represented in the activities of approved grants and cooperative agreements.

—In communities with *Healthy Start* projects, a commitment by applicants whose projects are related to activities of a *Healthy Start* program to coordinate their projects with *Healthy Start* program efforts.

—Within the context of community based systems of services, a commitment to collaborate with State MCH/CSHCN programs, primary care plans, public health, and prevention programs in the respective State(s), and other related programs.

Executive Order 12372

The Maternal and Child Health Services Block Grant program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: February 21, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-8484 Filed 4-10-92; 8:45 am]

BILLING CODE 4165-15-M

Indian Health Service

Indians Into Medicine Program

AGENCY: Indian Health Service, HHS.

ACTION: Notice of competitive grant applications for the Indians into Medicine Program.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are being accepted for the Indians into Medicine (INMED) Program established by section 114 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612), as amended by Public Law 100-713. There will be only one funding cycle during fiscal year (FY) 1992. This program is described at 93.970 in the Catalog of Federal Domestic Assistance and is governed by regulations at 42 CFR 36.310 *et seq.* and applicable OMB Circulars. Executive Order 12372 requiring intergovernmental review does not apply to this program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Educational and Community-based programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

DATES: An original and two (2) copies of the completed grant application must be submitted, with all required documentation, by close of business (c.o.b.) on July 1, 1992, to the Grants Management Branch, Division of Acquisition and Grants Operations, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, suite 605, Rockville, Maryland 20852. C.o.b. means 5 p.m. Eastern Daylight Time.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand carried applications received by c.o.d. 5 p.m.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Applications received after the announced closing date will be returned

to the applicant and will not be considered for funding.

Additional Dates

A. Application Deadline: July 1, 1992.
B. Application Review: July 12, 1992.
C. Applicants Notified of Results (approved, approved unfunded, or disapproved): August 1, 1992.
D. Anticipated Start Date: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: For program information, contact Mr. Wesley Picciotti, Chief, Scholarship Branch, Division of Health Professions Recruitment and Training, Indian Health Service, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, suite 100, Rockville, Maryland 20852, (301) 443-6197. For grants information, contact Ms. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grants Operations, Indian Health Service, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, suite 605, Rockville, Maryland 20852, (301) 443-5204. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, eligibility, programmatic objectives, program evaluation, required affiliation, funding availability and application procedure for FY 1992.

A. General Program Purpose

To augment the number of Indian health professionals serving Indians by encouraging Indians to enter the health professions and removing the multiple barriers to their entrance into the IHS and private practice among Indians.

B. Eligibility and Priority

Only public and nonprofit private colleges and universities with medical, nursing, and other allied health programs are eligible. The existing INMED grant program at the University of North Dakota has as its target population Indian tribes primarily within the States of North Dakota, South Dakota, Nebraska, Wyoming and Montana. A college or university applying under this announcement must propose to conduct its program among Indian tribes in States not currently served by the University of North Dakota INMED program.

C. Programmatic Objectives

A grant awarded under this announcement shall support a program which (1) provides outreach and recruitment for health professions to Indian communities including elementary and secondary schools and community colleges located on Indian reservations which will be served by the program; (2) incorporates a program advisory board comprised of representatives from the tribes and communities which will be served by the program; (3) provides summer preparatory programs for Indian students who need enrichment in the subjects of math and science in order to pursue training in the health professions; (4) provides tutoring, counseling and support to students who are enrolled in a health career program of study at the respective college or university; and (5) to the maximum extent feasible, employs qualified Indians into the program. An applicant must address all five of these objectives.

D. Fields of Health Care Considered for Support

The grant program must be developed to locate and recruit students with educational potential in a variety of health care fields. Primary recruitment efforts must be in the fields of medicine and nursing with secondary efforts in other allied health fields such as pharmacy, dentistry, medical technology, X-ray technology, etc.

E. Required Affiliations

The grant applicant must submit official documentation indicating a tribe's cooperation with and support of the program within the schools on its reservation and its willingness to have a tribal representative serving on the program advisory board. Documentation must be in the form prescribed by the tribe's governing body, i.e., letter of support or tribal resolution. Documentation must be submitted from every tribe involved in the grant program.

F. Fund Availability and Period of Support

Approximately $200,000 is available in FY 1992 for award of an INMED grant under section 114. It is anticipated that only 1 project will be funded. The project will be funded for up to three years with funding of succeeding years based on the availability of appropriations, continuing need for the program, and satisfactory performance. The anticipated start date of the grant will be September 1, 1992, in order to begin recruitment for the 1993–1994 academic year.

G. Application Process

1. An *IHS Grant Application Kit* may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, suite 605, Rockville, Maryland 20852, (301) 443-5204. This kit includes Standard Form PHS 5161-1 (Rev. 8/89); Standard Forms 424, 424A, and 424B (Rev. 4/88); Application Receipt Card—PHS 3038 (Rev. 9/81); instructions for preparing the program narrative; and IHS Application Check List.

2. The available funding level of $200,000 is inclusive of both direct and indirect costs. Because this project is for a training grant, the Department of Health and Human Services' policy limiting reimbursement of indirect cost to the lesser of the applicant's actual indirect costs or 8 percent of total direct costs (exclusive of tuition and related fees and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education other than agencies of State and local government.

3. The applicant may include as a direct cost tuition and student support costs related only to the summer preparatory program. Tuition and stipends for regular sessions are not allowable costs of the grant; however, students recruited through the INMED may apply for funding from the IHS Scholarship Programs.

4. The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant organization the obligations imposed by the terms and conditions of a grant award.

5. Upon its receipt, each application will be reviewed by the Grants Management Branch for eligibility, compliance with the announcement, and completeness. All acceptable applications will be subject to a competitive objective review and evaluation. An unacceptable application will be returned to the applicant without further consideration.

6. Applicants will be notified by August 1, 1992, of their status as approved, approved unfunded, or disapproved.

H. Criteria for Review and Evaluation

In accordance with 42 CFR part 36, subpart J, § 36.313, Evaluation and Grant Awards, applications will be evaluated against the following criteria (with clarification added).

• The potential effectiveness of the proposed project in carrying out the purposes of the authorizing legislation, with special emphasis on the objectives and the methodology portion of the application.

• The demonstrated capability of the applicant to successfully conduct the project, including organizational and scholarly commitment to the recruitment, education, and retention of Indian students.

• The accessibility of the applicant to target Indian communities or tribes, including evidence of past or potential cooperation between the applicant and such communities or tribes. Evidence must be supported by official documentation from the tribe in the form of a letter of support or tribal resolution.

• The relationship of project objectives to Indian health manpower deficiencies, indicating the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given highest consideration.

• The soundness of the fiscal plan for assuring effective utilization of grant funds.

• The completeness and responsiveness of the application.

Dated: March 24, 1992.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 92-8397 Filed 4-10-92; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service

National Vaccine Advisory Committee, Public Meeting

AGENCY: Office of the Assistant Secretary for Health PHS, HHS.

Correction: In notice document 92-5731 beginning on page 8767 in the issue of Thursday, March 12, 1992, third column, second paragraph, the date of the meeting is incorrect, and should read as follows:

Under **DATES:** Date, Time and Place: Tuesday, April 21, 1992 at 9 a.m.; and Wednesday, April 22, at 8:30 a.m.

The rest of the notice remains as published.

Dated: April 6, 1992.

Kenneth J. Bart,

Executive Secretary, NVAC.

[FR Doc. 92-8440 Filed 4-10-92; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3209; FR-2963-C-03]

Format for Disclosure Statements To Be Provided to Mortgagors Regarding the Accrual of Any Interest on a Mortgage After the Date of Prepayment; Correction

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice, correction.

SUMMARY: This Notice corrects an error in a previous Notice published by the Department on April 24, 1991 (56 FR 18951), relating to the format to be used for Disclosure Statements to mortgagors concerning the accrual of any interest after prepayment of a mortgage.

FOR FURTHER INFORMATION CONTACT: John Coonts, Acting Director, Office of Insured Single Family Housing, room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone: voice, (202) 708-3046; TDD (202) 708-4594. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION: Section 329 of the Cranston-Gonzalez National Affordable Housing Act requires a lender to provide to the mortgagor at or before closing, a Disclosure Statement, in such form as the Secretary of HUD shall prescribe. The statement shall describe the requirements that the mortgagor must fulfill upon prepayment of the mortgage to prevent the accrual of any interest on the mortgage after the date of prepayment. This Disclosure Statement must be given to the mortgagor in all cases that close on or after August 22, 1991.

In addition, section 329 requires each mortgage servicer to provide annual written notice to mortgagors that includes: (1) The amount of the outstanding principal balance of the loan; and (2) any requirements the mortgagor must fulfill to prevent the accrual of any interest on the mortgage after the date of prepayment.

As required under section 329, the Department published on April 24, 1991 a Notice in the **Federal Register** (56 FR 18951) setting forth the format in which a lender's Disclosure Statement to a mortgagor at time of closing must be written. The Notice also sets forth the format to be used for subsequent annual Disclosure Statements to be provided by the mortgage servicer.

In HUD's April 24, 1991 Notice, in the third column, the following statement is made in the Annual Disclosure Notice to mortgagors:

> The amount listed below is the amount outstanding for prepayment of the principal amount of your mortgage. This amount is good through ______ (date). (Any mortgage payments received before the stated expiration date will change the prepayment amount.)
>
> $______ (amount)

The above statement gives the impression that the principal amount due under the mortgage and the amount outstanding for prepayment are the same. This was not the intention of the Department.

Rather, the Department intends that the mortgagee provide, in the Annual Disclosure Notice, the amount outstanding for prepayment of the mortgage indebtedness, assuming that prepayment is to be made on the next installment due date (first day of the month). The amount should reflect the total amount outstanding for prepayment of the indebtedness due (including late charges and any other charges related to the loan and foreclosure or bankruptcy expenses incurred to date) under the mortgage.

The Department is aware that the amount provided would be subject to further accounting adjustments. A mortgagee that cannot provide a complete statement of amounts due (for example, costs incurred by the mortgagee but not yet billed), should add to the existing statement, as set forth below, that the amount provided is subject to further accounting adjustments, which will further clarify the content of the amount provided to the mortgagor.

This Notice corrects the above-quoted statement and adds further clarification for the mortgagor to understand the amount provided to read as follows:

> The amount listed below is the amount outstanding on the loan for prepayment of the indebtedness due under your mortgage. This amount is good through ______ (date). (The amount provided is subject to further accounting adjustments. Also, any mortgage payments received or advances made by us before the stated expiration date will change the prepayment amount.)
>
> $______ (amount)

The April 24, 1991 Notice also makes the following statements:

> In the middle column:
>
> You may prepay any or all of the outstanding principal balance on your mortgage at any time, without penalty. However, to avoid the accrual of interest on any prepayment after the date of the prepayment, the prepayment must be

received on or before the installment due date (the first day of the month).

In the third column:

You may prepay your mortgage at any time without penalty. However, you are required to provide a written 30-day advance notice of prepayment. In order to avoid the accrual of interest on the principal amount after the date of prepayment, you must arrange for the prepayment to reach your mortgage on or before the installment due date (the first day of the month).

In the third column:

You may prepay your mortgage at any time, without penalty. However, in order to avoid the accrual of interest on the principal amount after the date of prepayment, you must arrange for the prepayment to reach your mortgagee on or before the installment due date (the first day of the month).

Each of the above-quoted statements indicates that the prepayment must be received on or before the installment due date (the first day of the month). This implies that the mortgagor could avoid paying interest to the end of the month if the prepayment is received before that date (for example, on the 15th of the month). This was not the intention of the Department. Rather, the Department intends, and wishes to make clear by this correction, that interest will accrue on the principal amount when prepayment is made between installment due dates for the period from the date of prepayment to the next installment due date (the first of the next month). Only prepayments received *on* an installment due date shall take effect without some accrual of interest after that date. In other words, mortgage interest accrues between mortgage due dates: *i.e.*, the first of each month. To avoid accrual of mortgage interest for a given month, the mortgage must be prepaid on or before the first day of that month. Prepayment after the first of the month will subject the borrower to full mortgage interest through the entire month.

This Notice, therefore, corrects each of the above-quoted statements to read as follows:

You may prepay any or all of the outstanding indebtedness due under your mortgage at any time, without penalty. However, to avoid the accrual of interest on any prepayment after the date of the prepayment, the prepayment must be received on the installment due date (the first day of the month).

You may prepay your mortgage at any time without penalty. However, you are required to provide a written 30-day advance notice of prepayment. In order to avoid the accrual of interest on any prepayment after the date of prepayment, the prepayment must be received on the installment due date (the first day of the month).

You may prepay your mortgage at any time, without penalty. However, in order to avoid the accrual of interest on any prepayment after the date of the prepayment, the prepayment must be received on the installment due date (the first day of the month).

Since many mortgagees have already developed or purchased the disclosure statements as required by the April 24, 1991 Notice, mortgagees may use any existing supply of the forms by deleting the words "or before" in the last sentence of the second paragraph of the Notice to Mortgagor at Loan Closing (middle column) and in the "inserted" third paragraphs of the Annual Disclosure Notice (third column). When their existing stock is depleted, mortgagees shall use the corrected new forms.

Also, mortgagees that will (1) accept a prepayment with or without advance notice; and/or (2) accept payment on other than the installment due date and not charge any additional interest; may supplement the language of the prepayment disclosure statement, as appropriate, to inform mortgagors of this practice which is beneficial to the mortgagor. The mortgagee should clearly explain that this practice could change in the future, particularly if the mortgage is sold to a different mortgagee, and the mortgagees has the right to notify the mortgagor in the future that it is changing its practice to conform to its legal rights as stated in the mortgage instrument. The mortgagee should identify the language in the notice that would be applicable only if the mortgagee changes its practice. (None of the HUD-required language should be deleted, since it states the mortgagee's legal rights.)

Finally, in response to a number of requests, the Department has decided to allow mortgagees to combine the lender options of the Notice at Loan Closing into one form and the inserts and lender options contained in the Annual Disclosure Notice into one form in a checklist arrangement. If lenders choose to use such combined forms, they must be certain to check the appropriate boxes to avoid any confusion on the part of the mortgagor.

Accordingly, the formats for Disclosure Statements set forth in FR Doc. 91–9562, published in the **Federal Register** on April 24, 1991 at 56 FR 18951, are corrected to read in their entirety as follows:

Notice to Mortgagor at Loan Closing Regarding Prepayment

Mortgagor: ______
Address: ______
______

Date: ______
Loan No. ______
FHA No. ______

This notice is to advise you of the requirements that must be followed to accomplish a prepayment of your mortgage, and to prevent accrual of any interest after the date of prepayment.

You may prepay any or all of the outstanding indebtedness due under your mortgage at any time, without penalty. However, to avoid the acccural of interest on any prepayment after the date of the prepayment, the prepayment must be received on the installment due date (the first day of the month).

[Instructions: Lender may use either of the following options in its notice.]

(1) Otherwise, your payment will be refused until the next installment due date and interest will be charged to that date.

(2) Otherwise, you may be required to pay interest on the amount prepaid through the end of the month.

______
Mortgagee

Annual Disclosure Notice to Mortgagor

Mortgagor: ______
Address: ______
______

Date: ______
Loan No. ______
FHA No. ______

This notice is to advise you of requirements that must be followed to accomplish a prepayment of your mortgage, and to advise you of requirements you must fulfill upon prepayment to prevent accrual of any interest after the date of prepayment.

The amount listed below is the amount outstanding on the loan for prepayment of the indebtedness due under your mortgage. This amount is good through ______ (date). (The amount provided is subject to further accounting adjustments. Also, any mortgage payments received or advances made by us before the stated expiration date will change the prepayment amount.)

$______ (amount)

[For Mortgage Insured Before August 2, 1985, Insert:]

You may prepay your mortgage at any time without penalty. However, in order to avoid the accrual of interest on any prepayment after the date of prepayment, the prepayment must be received on the installment due date (the first day of the month).

[*For Mortgage Insured On or After August 2, 1985, Insert:*]

You may prepay your mortgage at any time without penalty. However, in order to avoid the accrual of interest on any prepayment after the date of prepayment, the prepayment must be received on the installment due date (the first day of the month).

[Instructions: Lender may use either of the following options in its notice.]

(1) Otherwise, your prepayment will be refused until the next installment due date and interest will be charged to that date.

(2) Otherwise, you may be required to pay interest on the amount prepaid through the end of the month.

If you have any questions regarding this notice, please contact ______ (name and/or department) at ______ (telephone number).

______
Mortgagee

Dated: April 7, 1992

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–8479 Filed 4–10–92; 8:45 am]

BILLING CODE 4210-27-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-33 (Sub-No. 73X)]

Union Pacific Railroad Co.—Abandonment Exemption—In Gooding County, ID

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 0.69-mile line of railroad between milepost 71.8, and milepost 72.49, near Bliss, in Gooding County, ID.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to the use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R.Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 13, 1992 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 23, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 4, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commisson, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Missouri Pacific Railroad Company, 1416 Dodge Street, room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 17, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate in a subsequent decision.

Decided: April 6, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–8509 Fied 4–10–92; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987)

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will be prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Petition for Approval of School for Attendance by Nonimmigrant Students.

(2) I–17. Immigration and Naturalization Service.

(3) On occasion.

(4) Businesses or other for-profit, non-profit organization. The information is used by learning institutions to determine acceptance of nonimmigrant students. INS also uses the information to establish a list of names and locations of schools or campuses within school systems with multiple locations which are bona fide institutions of learning.

(5) 1,700 annual responses at 1 hour per response.

(6) 1,700 annual burden hours.

(7) Not applicable under 3504(h).

(1) Application for stay of Deportation.

(2) I-246. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The information collected on this form will be used by the Service to determine the eligibility of the applicant for a stay of deportation.
(5) 2,500 annual responses at .25 hours per response.
(6) 625 annual burden hours.
(7) Not applicable under 3054(h).

(1) Certificate of Eligibility for Nonimmigrant Student (F-1) Status, for Academic and Language Students.
(2) I-20AB/ID. Immigration and Naturalization Service.
(3) On occasion.
(4) Businesses or other for-profit. In accordance with section 101(A)(15)(FO)(1) of the I&N Act, consular,and immigration officials use the form to determine if an alien student is eligible for an F-1 student visa.
(5) 210,000 annual responses at .5 hours per response.
(6) 105,000 annual burden hours.
(7) Not applicable under 3504(h).

(1) Request for Return of original Document(s).
(2) G-884. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form standardizes procedures for requesting the return of original document(s) contained in Alien Files. It requires the requestor to provide two forms of identification, or proof of relationship with with subject file in order to obtain document(s).
(5) 2,500 annual responses at .25 hours per response.
(6) 625 annual burden hours.
(7) Not applicable under 3504(h).

(1) Baggage and Personal Effects of Detained Aliens.
(2) I-43. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is used to protect the Government from claims that detained aliens were not given an opportunity to obtain their personal effects before deportation.
(5) 600,000 annual responses at .17 hours per response.
(6) 10,200 annual burden hours.
(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: April 8, 1992.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-8480 Filed 4-10-92; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (special Projects Section) to the National Council on the Arts will be held on April 28, 1992 from 8:30 a.m.-9:15 a.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 628-5433.

Dated: April 7, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-8364 Filed 4-10-92; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Section) will be held on April 28, 1992 from 9:30 a.m.-6 p.m. and April 29 from 9 a.m.-6 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will be overview of Arts Endowment and Dance program activities, field issues, Dance program budget and FY 1994 guidelines.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 7, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-8365 Filed 4-10-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Humanities

Humanities Panels Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC. 20506; telephone 202/786-0322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/786-0282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information

obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date*: May 1, 1992.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications for directing seminars in 1993 in the field of Politics and Society, submitted to the Division of Fellowships and Seminar, for projects beginning after June, 1993.

2. *Date:* May 4, 1992.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications for directing seminars in 1993 in the field of Foreign, Comparative and Medieval Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June, 1993.

3. *Date:* May 4–5, 1992.
Time: 9 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to Public Humanities Projects program during the March 1992 deadline, submitted to the Division of Public Programs, for projects beginning after September 1, 1992.

4. *Date:* May 5, 1992.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications for directing seminar in 1993 in the field of Art, Drama, Film and Music, submitted to the Division of Fellowships and Seminars, for projects beginning after June, 1993.

5. *Date:* May 11, 1992.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Summer Seminars for College Teachers applications for directing seminars in 1993 in the field of History, submitted to the Division of Fellowships and Seminars, for projects beginning after June, 1993.

6. *Date:* May 11, 1992.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the April 1, 1992 deadline in the Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after September, 1992.

7. *Date:* May 12, 1992.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Summer Seminars for College Teachers applications for directing seminar in 1993 in the field of Philosophy and Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after June, 1993.

8. *Date*: May 13, 1992.
Time: 9 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review proposals submitted to the April 1, 1992 deadline in the Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after September 1992.

9. *Date*: May 13, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review all applications to Conferences, submitted to the Division of Research Programs, for projects beginning after September 1, 1992.

10. *May 14–15, 1992.*
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media, submitted to the Division of Public Programs, for projects beginning after October 1, 1992.

11. *Date*: May 15, 1992.
Time: 9 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review proposals submitted to the April 1, 1992 deadline in the Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after September 1, 1992.

12. *Date*: May 19, 1992.
Time: 9 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review proposals submitted to the April 1, 1992 deadline in the Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after September, 1992.

13. *Date*: May 20, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review all applications to Conferences, submitted to the Division of Research Programs, for projects beginning after September 1, 1992.

14. *Date*: May 21, 1992.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the April 1, 1992 deadline in the Higher Education in the Humanities Program, for projects beginning after September 1, 1992.

15. *Date*: May 21–22, 1992.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of Public Programs, for projects beginning after October 1, 1992.

16. *Date*: May 29, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial/Triennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1992.

David C. Fisher,
Advisory Committee, Management Officer.
[FR Doc. 92–8441 Filed 4–10–92; 8:45 am]
BILLING CODE 7536-01-M

National Endowment for the Arts

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Fellowships/Sculpture Section) to the National Council on the Arts will be held on May 11–14, 1992 from 9 a.m.–8 p.m. and May 15 from 10 a.m.–4 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 15 from 2:30 p.m.–4 p.m. The topics will be policy review and guidelines discussion.

The remaining portions of this meeting on April 11–14 from 9 a.m.–8 p.m. and May 15 from 9 a.m.–2:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of

section 552b of title 5, United States Code.

Any person may observe meetings, or portions, thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 7, 1992.

Yvonne Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-8366 Filed 4-10-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Fourth Quarter CY 1991; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The AOs are described below, together with the remedial actions taken. The events are also being included in NUREG-0090, Vol. 14, No. 4 ("Report to Congress on Abnormal Occurrences: October-December 1991"). This report will be available at the NRC's Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555 about three weeks after the publication date of this **Federal Register** Notice.

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

91-10 Medical Diagnostic Misadministration at I. Gonzalez Martinez Oncologic Hospital in Hato Rey, Puerto Rico

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—June 17, 1991; I. Gonzalez Martinez Oncologic Hospital; Hato Rey, Puerto Rico.

Nature and Probable Consequences—On June 17, 1991, a patient scheduled to receive a diagnostic dose of iodine-131 (I-131), was mistakenly administered a dose of I-131 in the therapeutic range. The misadministration occurred when a nuclear medicine technologist misread the dose calibrator and administered 6.2 millicuries rather than 6.2 microcuries. The technologist realized the error nine minutes after the dose was administered when the printed dose label from the dose calibrator was checked. The physician-in-charge promptly administered potassium iodide solution to the patient to reduce the uptake of the radioactive iodine. The licensee estimated, based on 24-hour uptake measurements, that the uptake of radioactive iodine in the thyroid was approximately five percent resulting in an estimated dose to the thyroid of 1612 rem. The misadministration was promptly reported to the NRC.

The licensee continues to follow the patient's condition and has advised the NRC that the patient has not experienced any adverse effects because of the misadministration.

Cause or Causes—The cause is attributed to human error by the nuclear medicine technologist. The technologist did not verify the dose by reviewing the printed dose label before administering the dose.

Actions Taken To Prevent Recurrence

Licensee—The licensee's corrective actions included taking disciplinary action against the technologist and requiring that the nuclear medicine supervisor check each dose before the dose is administered to a patient.

NRC—NRC Region II conducted an inspection to review the circumstances associated with the misadministration, and to review the licensee's corrective actions. No violations of NRC requirements were identified during the inspection.

* * * * *

91-11 Medical Therapy Misadministration at William Beaumont Army Medical Center in El Paso, Texas

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—August 30, 1991; William Beaumont Army Medical Center; El Paso, Texas.

Nature and Probable Consequences—On August 30, 1991, a patient referred to the Medical Center for therapeutic radioiodine treatment of Graves' disease mistakenly received a 28.6 millicurie (mCi) oral dosage of iodine-131 (I-131) instead of the prescribed oral dosage of 15.0 mCi I-131. As a result, the patient's thyroid received about 31,900 rads instead of the 16,700 rads intended.

Prior to the administration, the radiopharmacist involved was informed that a radioiodine treatment for Graves' disease had been requested. He assumed that it was a 29 mCi treatment rather than a 15 mCi treatment. (At the Medical Center, a 15.0 mCi dose is routinely used for Graves' disease while a 29.0 mCi dosage is used for thyroid disorders such as multinodular toxic goiters.) He then requested a 29.0 mCi dose from Syncor, the commercial radiopharmacy. The actual dose received from Syncor was 28.6 mCi, and was labeled as such. When the radiopharmacist logged the dosage into the computer, after it had been measured by the dose calibrator, he failed to take note of the intended therapy dose as reflected in the referring physician's prescription. In addition, the counselling nuclear medicine physician did not verify the dosage to be administered with the intended dosage. The 28.6 mCi incorrect dosage was then administered to the patient.

The referring physician was notified on the day of the misadministration. The licensee stated that no adverse effects on the patient were noted. The patient's condition will be appropriately followed in the licensee's Endocrine Clinic.

Cause or Causes—The event was attributed to human error as a result of the radiopharmacist's and consulting nuclear medicine physician's inattentiveness and short experience at this facility. Although the prescribing physician's written request was available at the time the dosage was ordered and administered, both individuals failed to compare the prescribed dosage with the dose calibrator assay result or the radiopharmaceutical package label.

Additionally, both the radiopharmacist and consulting nuclear medicine physician had only been working at the facility for a short time and were unfamiliar with the use of radioiodine dosages as low as 15 millicuries for the treatment of Graves' disease. The physician's previous experience and personal preference involved a routine dosage of 25–30 millicuries for a hyperthyroid disorder, and the radiopharmacist had dispensed only a few therapeutic radioiodine dosages, involving higher dosages, prior to this particular case. The licensee also acknowledged that the consulting nuclear medicine physician may not have realized that the patient was receiving treatment for Graves' disease rather than a multinodular toxic goiter at the time the dosage was administered.

Actions Taken To Prevent Recurrence

Licensee—The radiopharmacist and consulting nuclear medicine physician were counselled and reinstructed as to the proper dose verification techniques and safeguards. For future therapies using radiopharmaceuticals, the counselling nuclear medicine physician must visually check the activity of the radiopharmaceutical dosage, as measured by the radiopharmacist or technologist, with the written physician prescription. The licensee also intends to require that the consulting nuclear medicine physician be familiar with the patient's case history prior to administering a therapeutic radiopharmaceutical dosage.

Also, the licensee's Radiation Safety Officer will conduct a training session in which all nuclear medicine personnel will be required to review the videotape entitled, "Good Practices in Preparing and Administering Radiopharmaceuticals," prepared by the NRC's Office for Analysis and Evaluation of Operational Data.

NRC—NRC Region IV conducted an inspection to review the circumstances associated with this misadministration and the licensee's corrective actions as described above. The inspection revealed no violations of regulatory requirements regarding this misadministration, and the licensee's determination of the cause of the event was considered accurate based upon interviews of the individuals involved. The licensee had implemented corrective actions as reported, and had continued to closely observe individual's performance with regard to therapeutic radiopharmaceutical dosages.

* * * * *

91–12 Medical Therapy Misadministration at St. Joseph's Hospital and Medical Center in Paterson, New Jersey

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurence.

Date and Place—October 25, 1991; St. Joseph Hospital and Medical Center; Paterson, New Jersey.

Nature and Probable Consequences—On November 13, 1991, NRC Region I was notified by a letter dated October 30, 1991, from the licensee's acting Radiation Safety Officer (RSO), that a therapeutic misadministration involving a strontium-90 (Sr-90) beta applicator, with a nominal activity of 95.5 millicuries, had occurred on October 25, 1991. The therapeutic treatment had been administered to the wrong patient.

The misadministration involved a 52-year old male who was scheduled for simulation for external beam therapy from a linear accelerator to the head and neck. This occurred when the radiation oncology department secretary placed the patient in the wrong treatment room without the patient's chart. The patient spoke minimal English and the radiation oncologist did not speak the patient's language. The physician questioned the patient more than once as to which area of his body was being treated. The patient pointed toward his head as the area to be treated. Based on this poor exchange of information, and without benefit of review of the patient's chart, the oncology physician then proceeded to administer a Sr-90 dose to the patient's eye. The licensee estimates that about 1,000 rads were delivered in 11 seconds to the surface of the right eye. The licensee estimates that no harmful effects occurred to the patient as a result of this event.

An NRC medical consultant was retained to review the licensee's dosimetry, the possible biological effects of the dose, and the actions to prevent recurrence. The consultant concluded that:

1. The patient should receive a slit-lamp examination of both eyes immediately and annually thereafter for the rest of the patient's life,

2. The possibility of cataracts is low, and

3. The methods to identify patients should be improved.

Based on source and geometry considerations, the consultant agreed with the licensee's estimate of about 1000 rads to the patient's eye. The consultant reviewed the licensee's corrective actions and found them to be appropriate. The consultant provided suggestions to the licensee on how to improve the corrective actions.

Cause or Causes—The cause was attributed to failure to follow the hospital protocol which requires reviewing the patient's chart prior to administering treatment.

Actions Taken to Prevent Recurrence

Licensee—The licensee's planned corrective actions include:

1. Patients will only be directed to the treatment area by an aide who will hand the treatment charts directly to the physician.

2. All patient's charts will include a polaroid photograph of the patient.

3. Access to the Sr-90 beta applicator storage area will be limited to the Physics Department and the Chief Technologist.

4. Physics staff will accompany the physicians during all Sr-90 beta applicator treatments and assist in determining the treatment times.

5. Staff training and reenforcement of appropriate patient processing procedures and NRC notification and reporting requirements will be conducted.

NRC—An NRC Region I inspector was dispatched to conduct a special inspection on November 15, 1991, of the circumstances surrounding this misadministration.

On December 26, 1991, the NRC transmitted to the licensee a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $6,250. Two violations were identified: (1) The failure to review the patient's prescription which resulted in the misadministration ($3,750); and (2) the failure to report the misadministration to the NRC within 24 hours of its discovery ($2,500). Both violations were classified as Severity Level III on a scale in which Severity Levels I through V range from the most significant to least significant, respectively. The licensee admitted the violations and paid the civil penalties in full.

* * * * *

91–13 Medical Therapy Misadministration at University of Pittsburgh Presbyterian-University Hospital in Pittsburgh, Pennsylvania

The overall AO criterion of this report notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—November 22, 1991; University of Pittsburgh Presbyterian-

University Hospital; Pittsburgh, Pennsylvania.

Nature and Probable Consequences—On November 22, 1991, NRC Region I was notified by the licensee's Radiation Safety Officer (RSO) that a therapeutic misadministration involving a cobalt-60 teletherapy unit had occurred at their Presbyterian University Hospital facility on November 21, 1991. The therapeutic treatment had been administered to the wrong part of a patient's body.

The technologists had looked at the patient's chart but set up the wrong treatment field. The patient received 287 rads to the thoracic vertebrae (upper back) instead of the prescribed 300 rads to the cervical vertebrae (lower neck). Because the patient had previously undergone thoracic vertebrae treatment, the technologist erroneously assumed that the thoracic treatment was continuing and administered the treatment without adequately reviewing the patient's chart which indicated the correct treatment area (cervical).

The licensee has determined that the treatment will not have any adverse effects on the patient. The patient is suffering from metastatic cancer of the breast and was receiving palliative radiation treatments to the spine.

Cause or Causes—The cause was attributed to failure to follow the written prescription in the patient's chart.

Actions Taken to Prevent Recurrence

Licensee—Corrective actions included stressing to the radiation technologists the need to carefully read patients' charts and to recognize notations of changes in the fields to be treated. When a field is completed on a patient, the administered dose is to be written down in the patient's chart using a different color ink.

NRC—NRC Region I will examine the licensee's preventive and corrective actions at the next scheduled inspection.

* * * * *

91-14 Medical Therapy Misadministration at University of Wisconsin Hospital in Madison, Wisconsin

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—November 27, 1991; University of Wisconsin; Madison, Wisconsin.

Nature and Probable Consequences—A patient was undergoing a series of five treatments for a cancer of the nasal septum using a high dose rate iridium-192 afterloading unit. In this type of treatment, a brachytherapy catheter was positioned in the patient's nasal passage. The computerized device then moved the source through the catheter into the treatment area. The source had a nominal strength of 4 curies.

The initial four treatments were completed without incident. However, prior to the fifth treatment on November 27, 1991, the operating physicist picked up the wrong patient chart located next to the device's control panel and entered the treatment program information into the computerized device. While the treatment was underway, a student technologist inquired about the length of time to complete the treatment. The prescribing physician and the operating physicist indicted different lengths of time. The physician, realizing there was an error, directed that the treatment be stopped immediately. Subsequently, it was discovered that the physicist had used the wrong patient chart and, therefore, entered incorrect treatment program information into the computer. The correct treatment information was then entered into the computer and the treatment series completed.

The erroneous treatment information positioned the iridium-192 source so that the patient's lips received an unintended exposure for about one minute. The dose calculation by the licensee indicated the patient received approximately 73 rads to the lips. According to the licensee, the radiation exposure received by the lips, for a correctly administered treatment to the nasal septum, would be about 25 rads. The licensee does not expect any consequences resulting from the additional exposure to the patient's lips from this misadministration.

Cause or Causes—The physicist failed to verify the identity of the patient and assumed incorrectly that the chart at the control panel was for the patient undergoing treatment.

Actions Taken to Prevent Recurrence

Licensee—The licensee has directed that the operating physicist check the identity of each patient before treatment, using patient photos or other means of verification. Patient charts for treatment series will be placed in a specified location. No exceptions will be made to the training required of a user. In the future, training will include a general section on high dose rate afterloading devices.

NRC—A special inspection was conducted on December 17, 1991, to review the circumstances surrounding the misadministation and to review the licensee's corrective actions. No violations of NRC requirements were identified. The corrective actions appeared sufficient to prevent a recurrence of the misadministration.

While the licensee has a viable quality assurance program in place, the changes adopted will strengthen the previous procedures.

* * * * *

Dated at Rockville, MD this 7th day of April 1992.

For The Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-8444 Filed 4-10-92; 8:45 am]

BILLING CODE 7590-01-M

Draft Report on Timing Analysis of PWR Fuel Pin Failures

April 2, 1992.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability for comment of DRAFT NUREG/CR-5787, "Timing Analysis of PWR Fuel Pin Failures".

SUMMARY: This notice announces the availability for comment of draft NUREG/CR-5787, "Timing Analysis of PWR Fuel Pin Failures." The information in this report will be considered by the NRC staff in the formulation of updated accident source terms for LWR reactors to replace those given in report TID-14844. These source terms are used in the licensing of nuclear power plants.

Any interested party may submit comments on this report for consideration by the staff. To be certain of consideration, comments must be received within 45 days of the date of this Federal Register notice and should be sent to the contact indicated below. Comments received after this date will be considered to the extent practical.

A copy of Draft NUREG/CR-5787 has been placed in the NRC Pubic Document Room, Gelman Buidling, 2120 L Street NW., Washington, D.C. 20555. A free single copy may be obtained by writing to the U.S. Nuclear Regulatory Commission, Attn: Distribution Section, 7103-MNBB, Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Leonard Soffer, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3916.

Dated in Rockville, Maryland this 31st day of March, 1992.

For the Nuclear Regulatory Commission.

Warren Minners, Director,

Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 92-8445 Filed 4-10-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF GOVERNMENT ETHICS

Information Collection Form Submitted for OMB Approval (Confidential Financial Disclosure Report Standard Form)

AGENCY: Office of Government Ethics.

ACTION: Notice of proposed new information collection form submitted to OMB for approval.

SUMMARY: The Office of Government Ethics (OGE) has submitted to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), a proposed new Confidential Financial Disclosure Report form, which will collect information from certain new entrant and incumbent employees in the executive branch. Since it will be a standard form, OGE has also submitted this form to the General Services Administration (GSA) for clearnance.

DATE: Comments on this proposal should be received by May 13, 1992.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503, telephone (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, telephone (202) 523–5757, FAX (202) 523–6325. A coy of the proposed new standard form and OGE's request for approval by OMB may be obtained from that office.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics (OGE) is sponsoring a new standard form, the Confidential Financial Disclosure Report, which will collect pertinent financial information from certain new entrant and incumbent employees in the executive branch for conflicts of interest review.

Section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990), required OGE to establish a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978 ("the Act"), 5 U.S.C. appendix. This will replace the system of confidential disclosure established by Executive Order 11222 of May 8, 1965, and Executive Order 12565 of September 25, 1986, which had been implemented in 5 CFR part 735.

Section 107(a) of the Act (as amended by the Ethics Reform Act of 1989, Public Laws 101–194 and 101–280) provided a statutory basis for this Executive order requirement, by authorizing the supervising ethics office for each branch of Government to require that employees file confidential financial disclosure reports, "in such form as the supervising ethics office may prescribe." Section 109(18)(D) of the Act defines "supervising ethics office" as OGE for the executive branch.

Pursuant to Executive Order 12674 and the Act, a new uniform confidential financial disclosure system will be established by means of an interim regulation on both public and confidential disclosure. That regulation, new 5 CFR part 2634, which was published on April 7, 1992, at 57 FR 11800–11830, carries a delayed effective date of 180 days for the confidential disclosure system, at which time it will supersede portions of 5 CFR part 735 (5 CFR 735.106 and subpart D) and implementing agency regulations.

The Confidential Financial Disclosure Report will serve as the standard form for all executive branch collections of confidential financial information for both regular and special Government employees. Under the former confidential disclosure system, there was no standard form. Each agency used its own internal formats, which it could base on two model formats made available by the Office of Personnel Management (OPM), one for regular employees and one for special Government employees. Those two model formats and any agency formats will be superseded by the new Confidential Financial Disclosure Report standard form. If necessary because of unique circumstances or special responsibilities, agencies may request OGE approval under the new regulation for supplemental collection of additional information.

The new form will be filed by a reporting individual with the designated agency ethics official at the executive agency where he is or will be employed. Reporting individuals are primarily middle-grade employees whose positions have been designated by their agency, in accordance with the new regulation, as requiring confidential financial disclosure in order to help avoid conflicts with their assigned responsibilities. Additionally, all special Government employees (unless exempted) are required to file. Reports must be filed within 30 days of entering a covered position (or earlier if required by the employing agency) and again annually by October 31.

Information required to be reported includes assets, sources of income, gifts, travel reimbursements, and liabilities of the Government employee, his spouse, and dependent children, which meet the threshold amounts. Significantly, no amounts or values will be required to be dislosed. Additionally, certain outside employment agreements, arrangements, and positions of the employee must be reported.

While almost all of the persons who file this standard form will be current executive branch Government employees at the time they complete the forms, some may be private citizens who are asked by their prospective agency to file a new entrant report prior to entering Government service. Therefore, Paperwork Reduction Act clearance from OMB is required.

Based on collections under the former confidential financial disclosure system, it is estimated that approximately 227,000 filings will be made annually with the new standard form throughout the executive branch. Of these, about 10%, totaling some 22,700 a year, would be filed by private citizens, those potential regular and special Government employees whose agencies desire that they file their new entrant reports prior to assuming Government responsibilities. Each filing is estimated to take an average of one and one-half hours. The number of private citizens whose reports will be filed with OGE is estimated at ten, yielding an annual burden of 15 hours; the remainder will file throughout the executive branch.

It is anticipated that this standard form, the Confidential Financial Disclosure Report, can be cleared, printed, and stocked by GSA in time for use by executive branch agencies prior to its effective date of 180 days following publication on Apirl 7, 1992, of the governing regulation.

Approved: April 8, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 92–8442 Filed 4–10–92; 8:45 am]

BILLING CODE 6345-01-M

OFFICE OF PERSONNEL MANAGEMENT

Interagency Advisory Group; Meeting

The Office of Personnel Management announces the following meeting:

Name: Executive Committee of the Interageancy Advisory Group.

Date and Time: April 21, 1992, 10 a.m.

Place: Office of Personnel Management, 1900 E Street, NW., room 5A06A, Washington, DC 20415–0001.

Type of Meeting: Open.

Point of Contact: Allan D. Heuerman, Assistant Director for Labor Relations and Workforce Performance, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., room 7412, Washington, DC 20415–0001.

Purpose of Meeting: To discuss members' views on a review of the Federal labor-management relations program.

Agenda: Introduction; discussion; public input; closing.

Office of Personnel Management

Constance Berry Newman,

Director.

[FR Doc. 92–8371 Filed 4–10–92; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Notice of the Effective Date, With Respect to the Republic of Armenia

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the effective date, with respect to the Republic of Armenia, of the agreement on trade relations between the United States of America and the Union of Soviet Socialist Republics.

SUMMARY: In Proclamation 6352 of October 9, 1991 (56 FR 51317), the President proclaimed that the "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics" enter into force and nondiscriminatory treatment would be extended to products of the U.S.S.R. in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with article XVII of the Agreement. Subsequently, the U.S.S.R. was succeeded by twelve independent states, including the Republic of Armenia. An exchange of diplomatic notes with the Republic of Armenia in accordance with article XVII of the Agreement, as modified by technical adjustments and retitled "Agreement on Trade Relations between the United States of America and the Republic of Armenia", took place in Washington DC on April 7, 1992. Accordingly, the Agreement became effective on April 7, 1992, with respect to the Republic of Armenia, and nondiscriminatory treatment is extended to products of the Republic of Armenia as of April 7, 1992 in accordance with the Agreement and as provided for in Proclamation 6352 of October 9, 1991.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 92–8556 Filed 4–9–92; 8:45 am]

BILLING CODE 3190-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Cave Creek Property, Maricopa County, AZ

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the Cave Creek property, located in Scottsdale, Maricopa County, Arizona, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 13, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Ms. Joanne C. Burroughs, Resolution Trust Corporation, Phoenix Consolidated Field Office, 2910 North 44th Street, Phoenix, AZ 85018, (602) 381–3460, Fax (602) 954–9549.

SUPPLEMENTARY INFORMATION: The Cave Creek property (also known as 333 Cave Creek Road) is located southeast of Cave Creek Road approximately two miles east of Pima Road, in the City of Scottsdale, Arizona. The property consists of approximately 332.21 acres of rolling desert terrain with major wash corridors running through the site. The west side of this property is located next to Tonto National Forest. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The site contains natural desert vegetation comprised of grasses, mesquite, and several varieties of cacti. There are three major wash corridors that run through the property from northeast to southwest. The slope and rolling terrain of the property provide a prominent view towards the southwest overlooking the Phoenix metropolitan area.

Property size: Approximately 332.21 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 13, 1992 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 13, 1992 to Ms. Joanne C. Burroughs at the above ADDRESSSES and in the following form:

Notice of Serious Interest

RE: Cave Creek Property

Federal Register Publication Date:

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1. Entity name.

2. Declaration eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sancturary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: March 8,1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92–8450 Filed 4–10–92; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability: L'Aviance Property, St. Lucie County, FL

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the L'Aviance, located in St. Lucie County, Florida, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 13, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Jerry M. McDonnell, Resolution Trust Corporation, Valley Forge Consolidated Field Office, P.O. Box 1500, 1000 Adams Avenue, Norristown, PA 19403, (215) 631-3755, Fax (215) 650-8558.

SUPPLEMENTARY INFORMATION: The property is located on South Hutchinson Island approximately four miles south of the City of Fort Pierce in St. Lucie County, Florida. The property contains endangered species and wetlands, and is bounded by the Atlantic Ocean on the east and the Indian River on the west. This property is located within the Hutchinson Island Unit (P11) of the Coastal Barrier Resources System. The property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property is a 21.56 acre strip of land that is about 550 feet wide and 1,700 feet long. State Road "A1A" runs north-south through the site about 600 feet west of the Ocean. The portion of the property west of State Road "A1A" is completely submerged and the only upland on the property is about 1.24 acres located east of the State Road. Coastal dunes, mangroves, and nesting habitat for Federally endangered sea turtles are found on the property. The endangered West Indian manatee frequents the nearby waterways. No development exists on the property except for a walkway which is used to monitor the height of the water.

Property size: Approximately 21.56 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 13, 1992 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by [insert date 90 days after Federal Register publication date] to Jerry M. McDonnell at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: L'Aviance Property

Federal Register Publication Date:

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1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: March 8, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92-8451 Filed 4-10-92; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; Pen Ryn on the Delaware, Bucks County, PA

AGENCY: Resolution Trust Corporation

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the Pen Ryn on the Delaware, located in Bucks County, Pennsylvania, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 13, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Jerry M. McDonnell, Resolution Trust Corporation, Valley Forge Consolidated Field Office, P.O. Box 1500, 1000 Adams Avenue, Norristown, PA 19403, (215) 631-3755, Fax (215) 650-8558.

SUPPLEMENTARY INFORMATION: This property is undeveloped and located on the east and west sides of State Road south of Station Avenue in Andalusia, Bucks County, Pennsylvania. The property contains wetlands and about 85 acres of the property is situated in the 100-year floodplain of the Delaware River. The site surrounds a public boat launch ramp managed by Bensalem Township for recreational purposes. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property consists of approximately 112 acres and contains a historic structure that is about 300 years old on about 2 acres. The site is densely wooded, fronts the Delaware River, and contains wetlands within the 100 year floodplain. The property wraps around a Bensalem Township boat launch on the river which is managed for recreational purposes.

Property size: Approximately 112 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 13, 1992 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 13, 1992 to Jerry M. McDonnell at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Pen Ryn on the Delaware

Federal Register Publication Date:

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1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing.)
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: March 8, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92-8452 Filed 4-10-92; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

April 7, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Coltec Industries, Inc., Common Stock, $.01 Par Value (File No. 7-8338).
Medeva PLC, American Depositary Receipt, No Par Value (File No. 7-8339).
Raymond James Financial, Inc., Common Stock, $.01 Par Value (File No. 7-8340).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-8369 Filed 4-10-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

April 7, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Alex Brown, Inc., Common Stock, $0.10 Par Value (File No. 7-8323).
American Income Holding, Inc., Common Stock, $0.10 Par Value (File No. 7-8324).
Chase Manhattan Corp., 9.08% Ser. J Cum. Pfd. Stock, No Par Value (File No. 7-8325).
Fidelity National Financial, Inc., Common Stock, $0.0001 Par Value (File No. 7-8326).
SPS Transaction Services, Inc., Common Stock, $0.01 Par Value (File No. 7-8327).
Toastmaster, Inc., Common Stock, $0.10 Par Value (File No. 7-8328).
Valassis Communications, Inc., Common Stock, $0.10 Par Value (File No. 7-8329).
Wells Fargo & Co., Dep. Shares (Rep. 1/20 of a share of 8 7/8% Pfd. Ser. D Stock) (File No. 7-8330).
Arrhythmia Research Technologies, Inc., Common Stock, $0.10 Par Value (File No. 7-8331).
CMI Corp., Voting Class A Common Stock, $0.10 Par Value (File No. 7-8332).
Farragut Mortgage Co., Inc., Common Stock, $0.10 Par Value (File No. 7-8333).
Organogenesis, Inc., Common Stock, $0.10 Par Value (File No. 7-8334).
Speciality Chemical Resources, Inc., Common Stock, $0.10 Par Value (File No. 7-8335).
Valspar Corp., Common Stock, $0.50 Par Value (File No. 7-8336).
Waterhouse Investors Services, Inc., Common Stock, $0.01 Par Value (File No. 7-8337).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 28, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-8367 Filed 4-10-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Midwest Stock Exchange, Inc.

April 7, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Value Merchants, Inc., Common Stock, $.01 Par Value (File No. 7-8346).
Brazilian Equity Fund, Inc., Common Stock, $.01 Par Value (File No. 7-8347).
International Testing Services, Inc., Common Stock, $.01 Par Value (File No. 7-8348).
Heritage Media Corporation, Class A Common Stock, Common Stock, $.01 Par Value (File No. 7-8349).
North American Recycling Systems, Inc., Common Stock, $.01 Par Value (File No. 7-8350).
North American Recycling Systems, Inc., Common Stock Purchase Warrants Expiring April 22, 1992, No Par Value (File No. 7-8351).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-8370 Filed 4-10-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearings; Philadelphia Stock Exchange, Inc.

April 7, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to setion 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Liberty Term Trust, Inc.—1999, Common Stock, $.001 Par Value (File No. 7–8341).
Metro Mobile, Class A Common Stock, $0.10 Par Value (File No. 7–8342).
Brazilian Equity Fund, Inc., Common Stock, $.001 Par Value (File No. 7–8343).
Devon Energy Corporation, Common Stock, $.10 Par Value (File No. 7–8344).
Hanger Orthopedic Group, Inc., Common Stock, $0.01 Par Value (File No. 7–8345).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 28, 1992, written data, views and arguments concerning the above-reference application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–8368 Filed 4–10–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice]

Rescission of Suspended Exports Regarding Japan Aviation Electronics Industry, Ltd. and Related Entities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that Public Notice 1482, effective September 10, 1991, suspending all existing licenses and other approvals granted pursuant to section 38 of the Arms Export Control Act, that authorized the export or transfer of defense articles or defense services by, for or to Japan Aviation Electronics Industry Ltd., its operating divisions, and its subsidiaries is rescinded. With regard to all other entities referenced in Public Notice 1482, the suspension remains in effect. Future license applications by any of these entities shall continue to be denied under the Japan Aviation Electronics, Industry Ltd. licensing privilege reinstatement. At a later date, public notice will be provided in the Federal Register regarding the debarment of Japan Aviation Electronics Industry, Ltd.

EFFECTIVE DATE: March 11, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Center for Defense Trade, Bureau of Politico-Military Affairs, Department of State (703:875–6650).

SUPPLEMENTARY INFORMATION: An indictment was returned on September 4, 1991, in the U.S. District Court, District of Columbia, charging Japan Aviation Electronics Industry, Ltd., with one count of conspiracy (18 U.S.C. 371) to violate section 38 of the Arms Export Control Act (AECA, 22 U.S.C. 2778) and the implementing International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130), and twenty-one substantive counts of violating the AECA and the ITAR. The indictment charges that the defendants conspired to violate, and did violate, the retransfer provisions of the ITAR, in that they transferred, or caused to be transferred, between 1984–1987, to Iran parts for the LN–12D inertial navigation systems installed in Iranian F–4 aircraft, without the required prior written approval of the Department of State.

On September 10, 1991 the Office of Defense Trade Controls, Department of State, suspended all existing licenses and other approvals, granted pursuant to section 38 of the Arms Export Control Act, that authorized the export or transfer by, for or to, Japan Aviation Electronics Industry, Ltd., and any other subsidiaries or associated companies, of defense articles or defense services. That suspension action was taken pursuant to sections 38 and 42 of the AECA (22 U.S.C. 2778 & 2791) and §§ 126.7(a)(1) and 126.7(a)(2) of the ITAR (22 CFR 126.7 (a)(1) & (2)).

Pursuant to a Consent Agreement between Japan Aviation Electronics Industry, Ltd. and the Department of State and an Order by the Assistant Secretary of State for Politico-Military Affairs, effective March 11, 1992, the Department of State's notice of September 10, 1991 imposing the suspension relating to existing licenses held by Japan Aviation Electronics Industry, Ltd. and its operating divisions, and its subsidiaries of defense articles or defense services is hereby rescinded. This suspension remains in effect for Aero Systems Inc., its subsidiaries, Aero Systems Aviation Corp., Hierak Company Ltd. and Aero Systems PTE. Ltd., and any other subsidiaries or associated companies, of defense articles or defense services listed in Public Notice 1482, dated September 10, 1991.

Dated: April 8, 1992.

William B. Robinson,

Director, Office of Defense Trade Controls, Department of State.

[FR Doc. 92–8640 Filed 4–10–92; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket P–005]

Interpretation of the Fourth Exception to Section 506 of the Merchant Marine Act, 1936, as Amended; Clarification and Extension of Time

On March 25, 1992, there was published in the Federal Register a Notice by the Maritime Administration of a Policy Consideration, docketed P–005, asking for comments on four stated issues and stating that the comments on four stated issues and stating that the comments would be received within 30 days from publication date. The docket concerns interpretation of the Fourth Exception to section 506 of the Merchant Marine Act, 1936, as amended, regarding operation of vessels built with the aid of construction-differential subsidy in a certain domestic trade.

On March 31, 1992, Puerto Rico Maritime Shipping Authority filed a motion for clarification of the Policy Consideration, namely whether such consideration

(1) Looks to suggestions for formulating a procedure under which to undertake examination mandated by the District Court; or

(2) Seeks views from parties affected as to such parties' ultimate positions, and the evidence in support thereof, on whatever issues such parties believe are encompassed within the Court's order on remand.

The referenced Court order was *Marine Transportation Services Sea-Barge Group, Inc.* v. *Busey*, C.A. No. 89-2278 D.D.C. (January 31, 1992).

The Maritime Administration clarifies its prior notice as follows:

1. Interested persons should submit procedural and substantive comments on all issues such persons deem raised by the aforesaid court order. The prior notice was deliberately broadly worded.

2. Upon receipt of such comments, the Maritime Administration will take such action as it deems appropriate procedurally and substantively in conformance with the aforesaid court order.

3. Prior to the effectiveness of any such action, it will be published in the **Federal Register** and interested persons will be given an opportunity to comment before there is final agency action.

As a matter of discretion the Maritime Administration will allow two weeks extension of time for comments to be filed, i.e., close of business May 8, 1992, which will be a total of six weeks notice, as well as four weeks actual notice from this clarification.

By Order of the Maritime Administrator

Date: April 7, 1992.

James E. Saari,

Secretary.

[FR Doc. 92-8402 Filed 4-10-92; 8:45am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. 91-60; Notice 2]

Solectria Corp.; Grant of Petition for Temporary Exemption From Seven Federal Motor Vehicle Safety Standards

This notice grants the petition by Solectria Corporation of Arlington, Massachusetts, to be exempted from seven Federal motor vehicle safety standards for passenger cars that it converts to electric power. The basis of the petition was that compliance with the standards would cause substantial economic hardship.

Notice of receipt of the petition was published on December 17, 1991, and an opportunity afforded for comment (56 FR 65531).

Petitioner intends to convert new Geo Metro passenger cars to electric power. The vehicles, seating 2, 4, and 5 passengers, would be marketed as the "Solectria Force". The vehicles to be converted have been certified by their original manufacturer to conform to all applicable Federal motor vehicle safety standards. Howerver, petitioner determined that the vehicles may not conform with all or part of seven Federal motor vehicle safety standards after their modification. The standards for which exemptions were requested are discussed below.

1. Standard No. 103, Windshield Defrosting and Defogging Systems.

Petitioner stated that the Force relies on an electric resistance/forced hot air heater to provide cabin heat and defrosting. While it believed that the heating system will perform similarly to the original one, recertification would be required. It requested an exemption of one year for testing for compliance, and such subsequent modifications as may be required to certify compliance with the standard.

2. Standard No. 204, Steering Control Rearward Displacement.

3. Standard No. 208, Occupant Crash Protection.

4. Standard No. 212, Windshield Mounting.

5. Standard No. 219, Windshield Zone Intrusion.

Exemption was requested from these four standards for a period of two years. The conversion of the vehicle to electric power results in a net weight increase of 250 pounds for the 4- and 5-passenger models, which is 15% over the weight at which the vehicle was originally certified, and of 350 pounds for the 2-passenger model, which is 20% over original certificaion weight. Petitioner stated that "thirty-mile per hour barrier crash testing is needed to determine the actual energy absorbing characteristics of the three Force configuration."

6. Standard No. 214, Side Door Strength.

7. Standard No. 216, Roof Crush Resistance.

These standards require vehicle components to be able to withstand a crush force determined by the vehicle curb weight. As noted above, the Force's curb weight, is 15% and 20%, depending on the model, over the weight of the vehicle originally certified to meet these standards. The petitioner requested an exemption of two years after which it expects to be able to certify compliance with these standards.

Petitioner argued that to require immediate compliance would create substantial economic hardship. As of September 30, 1990, the end of its first fiscal year, the company had a net income of $8,185.66. At the end of the first ten months of fiscal year 1991, it had an additional net income of $7,360.26. Aside from testing for compliance with Standard No. 103, the cost for "one set" of testing for the remaining standards on one vehicle is approximately $30,000, exclusive of the costs of delivering the vehicle to the test facility. Because the Force will be available in three configurations, the petitoner believed that it must test all configurations for compliance. Solectria estimated a total testing cost of $216,100. An exemption would permit vehicle sales and the generation of cash permitting testing while the exemptions are in effect. It plans to produce ten vehicles in its first year of production, with an additional 50 vehicles in the second year. A denial of the petition would delay Solectria's production while it attempted to test for conformance, but the costs of testing immediately would require a retail price of $50,000 for a Force. Petitioner doubted that it could sell a car at this price, and that, accordingly, it would be forced out of business in the year following a denial of its petion.

According to the petitioner, granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety act by helping to relieve environmental problems associated with automotive transportation. Solectria believes that "the Force can make a very positive contribution to the country's clean transportation needs quickly and effectively."

No comments were received on the petition.

Petitioner's lifetime net income, as of the time of filing its petition, was less than $16,000. It has estimated the cost of testing for compliance for standards other than Standard No. 103 as $30,000, exclusive of costs of delivering the vehicle to the test facility. As it prefers to test the Solectria Force in all configurations, additional testing will be required. The pettioner has demonstrated that immediate compliance would cause it substantial economic hardship. Because the host vehicle is certified to be in compliance with all applicable Federal motor vehicle safety standards (and possibly would remain in compliance after the modifications), the petitioner may be said to have made a good faith effort to comply with the standards within the meaning of the statutory phrase. For the same reason, an exemption of a previously-certified vehicle (which may still conform) is consistent with the objectives of the Act. Finally, though the volume of production would be small, the Solectria Force is a zero emissions vehicle, and an exemption would be in the public itnerest.

Although the petitioner appeared to request an exemption from the totality of Standard No. 208, the agency understands that the petitioner's actual concern is with the performance requirements of S5 Occupant Crash

Protection Requirements, and that the restraint systems with which the Geo Metros were originally equipped will remain in place.

On the basis of the foregoing, it is hereby found that immediate compliance would cause the petitioner substantial economic hardship, that the petitioner has in good faith attempted to conform with the standards from which exemption is requested, and that an exemption would be consistent with the public interest and the objectives of the National Traffic and Motor Vehicle Safety Act. Accordingly, Solectria Corporation is hereby granted NHTSA Temporary Exemption No. 92-2 from the following standards, or portions thereof: Paragraphs S4.2 and S4.3 of 49 CFR 571.103 Motor Vehicle Safety Standard No. 103, Windshield Defrosting and Defogging Systems, expiring May 1, 1993; 49 CFR 571.204 Motor Vehicle Safety Standard No. 204, Steering Control Rearward Displacement, Paragraph S4.1.4.1 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208, Occupant Restraint Systems, 49 CFR 571.212 Motor Vehicle Safety Standard No. 212, Windshield Mounting, 49 CFR 571.214 Motor Vehicle Safety Standard No. 214, Side Door Strength, 49 CFR 571.216 Motor Vehicle Safety Standard No. 216, Roof Crush Resistance, and 49 CFR 571.219 Motor Vehicle Safety Standard No. 219, Windshiled Zone Instrusion, expiring May 1, 1994.

15 U.S.C. 1410: delegation of authority at 49 CFR 1.50.)

Issued: April 7, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-8388 Filed 4-10-92; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the Suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before April 28, 1992.

ADDRESSES: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
6610-X	ARCO Chemical Company, Newtown Square, PA (See Footnote 1).	6610
7769-X	Brunswick Corporation—Defense Division Lincoln, NE (See Footnote 2).	7769
9888-X	ABB Advanced Battery Systems Inc., Mississauga, Ontario, CN (See Footnote 3).	9888
10547-X	Tri-Wall, Butler, IN (See Footnote 4).	10547

(*1*) To modify proper shipping name to read organic peroxide; change regulation affected, eliminate tank car as authorized container; provide for MC-312 cargo tank in addition to MC-307 and to eliminate visual inspection after each trip.

(*2*) To modify exemption to provide for additional FRP type cylinder for use in transporting nonflammable gases.

(*3*) To provide for rail as an additional mode of transportation.

(*4*) To modify exemption to provide for additional commodities classed as corrosive solids and poison B solids.

Application No.	Applicant	Parties to exemption
4453-P	Sandex, Inc., Las Vegas, NV	4453
5206-P	Sandex, Inc., Las Vegas, NV	5206
6325-P	Sandex, Inc., Las Vegas, NV	6325
6614-P	Allied Universal Corporation, Miami, FL.	6614
7834-P	American Industrial X-Ray Service, Inc., Antioch, IL.	7834
8006-P	Celebration Fireworks, Indianapolis, IN.	8006
8287-P	Nalco Chemical Company, Naperville, IL.	8287
8451-P	Western Atlas International, Inc., Houston, TX.	8451
8453-P	Sandex, Inc., Las Vegas, NV	8453
8554-P	Sandex, Inc., Las Vegas, NV	8554
8554-P	OEI Incorporated, Whitesburg, GA.	8554
8582-P	Cedar River Railroad, Waterloo, IA.	8582
8582-P	Chicago Central and Pacific Railroad Company, Waterloo, IA.	8582
8627-P	Pronto Chemical & Pressure Testing Corporation, Hennessey, OK.	8627
8645-P	Sandex, Inc., Las Vegas, NV	8645
8958-P	Double F Productions, Tucson, AZ.	8958
9355-P	Added Value Technology, Inc. (AVT), Littleton, CO.	9355
9491-P	Air Products and Chemicals, Inc., Allentown, PA.	9491
9507-P	GenEx, Roseville, MN	9507
9579-P	Ireco of Florida, Inc., Miramar, FL.	9579
9579-P	OEI, Incorporated, Whitesburg, GA.	9579
9623-P	Sandex, Inc., Las Vegas, NV	9623
9997-P	Traditions, Inc., Deep River, CT.	9997
9998-P	Morrell Incorporated, Auburn Hills, MI.	9998
10239-P	BASF Corporation, Parsippany, NJ.	10239
10323-P	Airco Special Gases, Riverton, NJ.	10323

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 7, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-8406 Filed 4-10-92; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application

for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-Carrying aircraft.

DATES: Comments must be received on or before May 13, 1992.

ADDRESSES: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If conformation to receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10760-N	Applied Companies San Fernando, CA	49 CFR 173.302(a)(3), 175.3, 178.36	To authorize the manufacturer, mark and sell of non-DOT specification cylinders overpacked in strong outside packaging for use in transporting various nonliquified compressed gases. (Modes 1, 2, and 4.)
10762-N	Advanced Monobloc Corporation Hermitage, PA.	49 CFR 173.304(a), 175.3, 178.65	To authorize the manufacture, mark and sell of a non-DOT specification cylinder for use in transporting chlorodifluoromethane, classed as nonflammable gas. (Modes 1, 2, 3, and 4.)
10763-N	Memphis Aviation Services Memphis, TN.	49 CFR 173.52, 173.53	To authorize the transportation of Class A and B explosives which are forbidden or exceed the quantity limitations authorized for shipment by air (Mode 4.)
10764-N	Snyder Industries, Inc., Lincoln, NE	49 CFR 173, 173.119, 173.125, 173.245, 173.249, 173.249(a), 173.250(a), 173.257, 173.262, 173.263, 173.264, 173.265, 173.266, 173.269, 173.272, 173.276, 173.277, 173.283, 173.287, 173.288, 173.289, 173.292, 173.297, 173.299(a).	To authorize the manufacture, mark and sell of rotationally molded polyethylene portable tank for the shipment of certain hazardous materials. (Modes 1, 2.)
10765-N	Calibron Systems, Inc., Scottsdale, AZ	49 CFR 173.119, 173.304, 173.315	To authorize the manufacture, mark and sell of meter proving units to be affixed to a truck or trailer used to calibrate meters containing liquid hydrocarbon products. (Mode 1.)
10766-N	Baker Performance Chemicals, Inc., Houston, TX.	49 CFR 173.29(c)(2)	To authorize the transportation of non-DOT specification storage tanks with residual amounts of flammable and corrosive liquids. (Mode 1.)
10767-N	Archer Daniels Midland Company (ADM), Decatur, IL.	49 CFR 174.67(i)+(j)	To authorize tank cars containing carbon dioxide, classed as nonflammable gas, to remain connected during unloading without the physical presence of an unloader. (Mode 2.)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(a)).

Issued in Washington, DC, on April 7, 1992.

Suzanne Hedgepeth

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-8407 Filed 4-10-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 2, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: This notice supplements a previous Federal Register notice (FR Doc. 92-7573, dated March 27, 1992, published on April 2, 1992, page 11348) for forms TD F 90-22.44 and TD F 90-22.45 (and related instructions). Because the Financial Crimes Enforcement Network (FinCEN) is requesting less than the normal 60-day review, OMB has requested FinCEN to publish the forms in the Federal Register to allow the public to review them.

Departmental Offices/Financial Crimes Enforcement Network

OMB Number: New.
Form Number: TD F 90-22.44.
Type of Review: New collection.
Title: Request for Query/Analysis.
OMB Number: New.
Form Number: TD F 90-22.45.
Type of Review: New collection.
Title: FinCEN Access Identification Form.

Lois K. Holland,

Departmental Reports, Management Officer.

BILLING CODE 4810-25-M

Control No. ____
(FinCEN use only)

FINANCIAL CRIMES ENFORCEMENT NETWORK

3833 N. Fairfax Drive
Arlington, VA 22203
1-800-SOS-BUCK

FAX: 703-516-0526
(FAX request will be accepted in lieu of original)

REQUEST FOR QUERY/ANALYSIS

Please print or type all information

A. TYPE OF REQUEST

1. Category
   - ☐ Single Subject
   - ☐ Criminal Organization
2. Scope of Criminal Activity
   - ☐ Local ☐ National
   - ☐ International
3. Type of Agency
   - ☐ Federal ☐ State/Local ☐ Foreign

B. CASE INFORMATION

PRIMARY SUBJECT OF INVESTIGATION: (individual or business)

NAME: ______________________________
Last First Middle

ADDRESS: ______________________________
Number Street Apt. or Suite #
____
City State Zip Country

DOB________ POB: City________ State________ Country________

SSN or EIN#________ FBI #________ SID #________

PHONE #________ OTHER________
(specify)

RACE______ SEX______ HEIGHT______ WEIGHT______ EYES______ HAIR______

Attach additional sheets, completing **ONLY** this section (B) for other principal associates and businesses. Also list known aliases, social security numbers, DOBs, addresses and financial institutions dealt with by principals or associates.

Number of additional sheets attached: ☐

C. PURPOSE OF REQUEST

1. TYPE OF INVESTIGATION (check one) ☐ Criminal ☐ Civil
2. REASON FOR REQUEST (check one)
   - ☐ General Investigative Support
   - ☐ Search/Seizure
   - ☐ Other (cite reason) ________
   - ☐ Arrest Warrant
   - ☐ Location of Fugitive
   - ☐ Case Development/Intelligence
3. DO YOU ANTICIPATE ASSET FORFEITURE IN THIS CASE? YES ☐ NO ☐
   - a. If yes, have specific seizable assets been identified? YES ☐ NO ☐
   - b. If so, please list such real, personal, and/or financial data with identification numbers on an attached sheet.
4. GIVE DESCRIPTION OF TYPE OF PRODUCT/RESULT SOUGHT FROM FinCEN (check one)
   - ☐ Analytical report (linking of individuals/businesses to criminal activity)
   - ☐ Database Extracts

TDF 90-22.44 (03/92)
OMB________

(continued on reverse)

D. **INVESTIGATIVE INFORMATION**

1. Complete the following:

a. **Are other agencies participating in this investigation?** ☐ YES ☐ NO
If yes, specify: ________ ________ ________ ________

b: **Is this a narcotics investigation?** ☐ YES ☐ NO (If no, go to c.)
If yes, is this an approved OCDETF case? ☐ YES ☐ NO

Specify type of drug (check one): ☐ Cocaine ☐ Heroin ☐ Marijuana ☐ Other controlled substance

Is the major focus of your investigation to establish the existence of a financial violation, (e.g., money laundering, Bank Secrecy Act, CCE, income tax, etc.)? ☐ YES ☐ NO

c. For non-drug cases, specify category of investigation (check one):
☐ Financial Institution ☐ Money Laundering - Non-Narcotics
☐ General Financial Crimes (e.g., public or political corruption, tax or contract fraud, bribery, etc.)
☐ Other General Crimes (e.g., firearms violations, terrorist activity, etc.)

2. **Provide overview of criminal activity and principal statutory violation(s).**
Include why this investigation is a priority for your agency and if any information is protected by grand jury secrecy. (Attach additional sheets if necessary.)

E. **REQUESTOR INFORMATION**

REQUESTOR: Requestor Case No.: ________

NAME: ________ TITLE: ________

AGENCY: ________ TELEPHONE: ________ FAX: ________

ADDRESS: ________

Is this request generated from a Core City OCDETF Office? ☐ YES ☐ NO
Specify: ________ ________
City Region

Is this request from a HIDTA-funded Office? ☐ YES ☐ NO

AUTHORIZING OFFICIAL:

NAME: ________ TITLE: ________

ADDRESS: ________

TELEPHONE: ________ FAX: ________

I request that FinCEN query these names in the appropriate law enforcement and commercial databases, including the financial database containing Bank Secrecy Act information that my agency may lawfully receive.

SIGNATURE: ________ DATE: ________

PAPERWORK REDUCTION ACT NOTICE: This form is in compliance with the Paperwork Reduction Act of 1980. Its purpose is to obtain information necessary to respond to requests for investigative assistance. The information will be used to process requests for assistance and for internal statistical purposes. The furnishing of this information is voluntary. The estimated average time to fill out this form is 30 minutes. If you have comments concerning the accuracy of this time estimate, or suggestions for simplifying this form, please send these comments (not the completed form) to: FinCEN, 3833 N. Fairfax Drive, Arlington, VA 22203, and the Office of Management and Budget, Paperwork Reduction Project ~~(1545-xxxx~~), Washington, DC 20503.
(1505-xxxx)

FinCEN

FINANCIAL CRIMES ENFORCEMENT NETWORK

FINANCIAL CRIMES
ENFORCEMENT NETWORK
3833 N. Fairfax Drive, Arlington, VA 22203
Telephone (703) 516-0520

THE DEPARTMENT OF THE TREASURY 1789

Please print or type all information.

FINCEN ACCESS IDENTIFICATION FORM

TO: **FinCEN Operations Center**
3833 N. Fairfax Drive
Arlington, VA 22203

DATE: ____________

FTS:	324-0508	COMMERCIAL:	1-800-SOS-BUCK
FAX: (FTS)	324-0526	COMMERCIAL:	703-516-0526

FROM: (Your agency) ____________

(Your address) ____________

____

FinCEN Database Access Identifiers

Name: (Last, First) ____________

Social Security #: ____________ DOB: ____________

Badge (or Credentials) ____________ Title: ____________

Mother's First Name: ____________

Other Special Identifier: ____________
(provided by FinCEN)

Call Back Number: ( ) ____________ FAX: ( ) ____________
area code area code

Supervisor: ____________

SIGNATURE: ____________ DATE: ____________
(Authorized Representative Identified Above)

FinCEN will insure that all information contained in this access registration will remain secure at all times and protected by federal law.

*The representative identified above is designated to request and receive FinCEN data on behalf of the requesting agency, such authorization to include disclosable Bank Secrecy Act data. We also certify that this individual meets the minimum personnel security requirements as stated on the reverse.

SIGNATURE: ____________ DATE: ____________
*(Agency Head Authorization)

Authorization Cancelled Date: Signature: (See Reverse)

TDF 90-22.45 (03/92)
OMB ____________

BILLING CODE 4810-25-C

Personnel Security Requirements

It is FinCEN's position that the State agency head who designates the FinCEN coordinator(s) for the particular State shall have the primary responsibility for ensuring the reliability of such designees from the security standpoint.

General guidelines currently being consideered for inclusion in a Counter Narcotics Information Guide under consideration for possible issue by the Office of National Drug Control Policy provide that background investigations should include the following and should be updated every five years;

—State and Local Indices Checks
—Prior Employment Checks
—Educational Institution Checks
—Named and Unnamed References
—Credit Checks
—Drug Screening

These are strongly suggested by FinCEN, but are not mandatory. FinCEN obviously has the capability of performing a number of record checks through its own sources. Currently, FinCEN's only specific requirements are as follows:

1. The individual must be a law enforcement officer, criminal investigator, or intelligence analyst supporting criminal investigations.
2. The individual must have been the subject of background investigation including, at minimum;
   —criminal history check (negative)
   —verification of identity, including full name, DOB and SSN
   —fingerprints on file
3. The individual must not currently be under investigation or indictment for any criminal offense.
4. The individual must be a citizen of the United States for general access. However, waivers of this standard may be given by FinCEN on a case-by-case basis in extenuating circumstances (e.g., where certain foreign nationals or resident aliens who are assisting in specific investigations and their need for access is deemed critical to the particular case).

Signature of the Agency Head on the FinCEN Access Identification Form is considered certification that the identified Authorized Representative has met the minimum security requirements as outlined above.

Cancellation of Authorization

It is the responsibility of the participating agency(s) to keep the list of authorized individuals current. FinCEN should be notified immediately if an individual who has been given access no longer needs access because of a change in duties or no longer meets the security standards. Each agency should keep on hand a copy of the FinCEN Access Identification Form for each individual authorized by the agency head. In the event the agency wishes to discontinue authorization for a particular individual for any reason, the form should be immediately Faxed to FINCEN with the "authorization cancelled" section at the bottom completed, showing the date and signature of the head of the agency/office.

Privacy Act Information

The following is provided pursuant to Section 3 of the Privacy Act of 1974 (5 U.S.C. 522a(e)(3)):

Solicitation of this information is made pursuant to 31 U.S.C. 321(b). The information will be used to verify the identity of persons requesting information from the Department of the Treasury, Financial Crimes Enforcement Network ("FinCEN") and shall only be used by Federal officials for identification purposes. Failure to discuss this information may result in a denial of the respondent's query.

Paperwork Reduction Act.

This form is in compliance with the Paperwork Reduction Act of 1980. Its purpose is to obtain information necessary to verify the identity of persons requesting FinCEN assistance. The furnishing of this information is voluntary. The estimated time to complete this form is 10 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for simplying this form, please send your comments (not the completed form) to: FINCEN, 3833 N. Fairfax Drive, Arlington, VA 22203, and the Office of Management and Budget, Paperwork Reduction Project (1505–xxxx), Washington, DC 20503.

[FR Doc. 92–8050 Filed 4–10–92; 8:45 am]

BILLING CODE 4810–25–M

Office of Thrift Supervision

Carrollton Homestead Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section (d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Carrollton Homestead Association, F.A., New Orleans, Louisiana, on March 13, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–8428 Filed 4–10–92; 8:45 am]

BILLING CODE 6720–01–M

Ukrainian Federal Savings and Loan Association, Philadelphia, PA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section (d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Ukrainian Federal Savings and Loan Association, Philadelphia, Pennsylvania, on March 12, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–8427 Filed 4–10–92; 8:45 am]

BILLING CODE 6720–01–M

Augusta Federal Savings Association; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Superivison duly replaced the Resolution Trust Corporation as conservator for Augusta Federal Savings Association, Baltimore, Maryland ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 20, 1992.

Dated: April 6, 1992.

By the Office of the Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–8423 Filed 4–10–92; 8:45 am]

BILLING CODE 6720–01–M

AmeriFirst Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for AmeriFirst Federal Savings Bank, Miami, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 20, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8425 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Bell Federal Savings Bank; Upper Darby, PA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Bell Federal Savings Bank, Upper Darby, Pennsylvania ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 20, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8414 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Carrollton Homestead Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Carrollton Homestead Association, New Orleans, Louisiana, OTS No. 3605, on March 13, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8433 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Central Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Central Federal Savings Bank, Mineola, New York ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 13, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8419 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Colonial Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Colonial Federal Savings Bank, Cranston, Rhode Island ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 13, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8417 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Connecticut Savings and Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Connecticut Savings and Loan Association, F.A., Hartford, Connecticut ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on February 7, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8437 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

CorEast Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for CorEast Federal Savings Bank, Richmond, Virginia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 6, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8429 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

FarWest Savings and Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for FarWest Savings and Loan Association, F.A., Newport Beach, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 20, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8421 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

1st Ohio Savings Bank, F.S.B., St. Bernard, OH; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for 1st Ohio Savings Bank, F.S.B., St. Bernard, Ohio, OTS No. 3011, on March 13, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8432 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Guaranty Federal Savings Association; Warner Robins, Georgia; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Guaranty Federal

Savings Association Warner Robins, Georgia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 13, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8418 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Home Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d) (2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Home Federal Savings Bank, Salt Lake City, Utah ("Association"), OTS. No. 8849, with the Resolution Trust Corporation as sole Receiver for the Association, on February 27, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8435 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Irving Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Irving Federal Savings and Loan Association, Paterson, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on February 21, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8420 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Jefferson Federal Savings and Loan Association, F.A. Birmingham, AL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Jefferson Federal Savings and Loan Association, F.A., Birmingham, Alabama ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 13, 1992.

Dated April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8416 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Monycor Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Monycor Federal Savings Bank, Barron, Wisconsin ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 13, 1992.

Dated April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8430 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Newton Savings Bank, FSB, Fairfield, NJ; Replacement of Conservator With a Receiver

Notice hereby given that, pursuant to the authority contained in subdivision (F) of § 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Newton Savings Bank, FSB, Fairifeld, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 20, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8431 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Davy Crockett Federal Savings Association, Crockett, Texas ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on March 6, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8436 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Burleson County Federal Savings Association, Caldwell, Texas ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on February 27, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8438 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Security Federal Savings and Loan Association; Waterbury, CT; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Security Federal Savings and Loan Association,

Waterbury, Connecticut ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 20, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8412 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Springfield Federal Savings Association; Springfield, PA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Springfield Federal Savings Association, Springfield, Pennsylvania ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 20, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8415 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Trustbank Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Trustbank Federal Savings Bank, Tysons Corner, Virginia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 20, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8426 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Ukrainian Savings and Loan Association, Philadelphia, PA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision duly appointed the Resolution Trust Corporation as sole Receiver for Ukrainian Savings and Loan Association, Philadelphia, Pennsylvania, on March 12, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8434 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

Western Savings and Loan Association; Glenview, IL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Western Savings and Loan Association, Glenview, Illinois ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 20, 1992.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8413 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-16; OTS No. 0903]

Dolton-Riverdale Savings and Loan Association, Dolton, IL; Final Action; Approval of Conversion Application

Notice is hereby given that on March 16, 1992, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Dolton-Riverdale Savings and Loan Association, Dolton, Illinois; for permission to convert to the stock form of organization. Copies of the application are available for inspection at the information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Office of Thrift Supervision, Central Regional Office, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8422 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-15: OTS No. 2688]

Superior Federal Bank, F.S.B., Fort Smith, Arkansas; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that on March 20, 1992, the Director of the Office of Thrift Supervision or his designee approved the application of Superior Federal Bank, F.S.B., Fort Smith, Arkansas, for permission to convert to the stock form of organization in a voluntary supervisory conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: April 6, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-8424 Filed 4-10-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Amended Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Social Security Administration (SSA) records of Black Lung benefit recipients with VA Pension and parents' dependency and indemnity compensation records.

The goal of this match is to identify VA benefit recipients who are also receiving Black Lung benefits payments reportable to VA as countable income.

The Department of Veterans Affairs (VA) plans to match records of veterans and surviving spouses and children who receive pension and parents who receive dependency and indemnity compensation (DIC) from VA with records of Blank Lung benefit recipients maintained by the Social Security Administration (SSA). The match with SSA will provide VA with data from the SSA Black Lung Payment Master File. VA will use the data to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Currently,

information about a VA beneficiary's receipt of Black Lung benefits is obtained from reporting by the beneficiary. The proposed matching programs will enable VA to ensure accurate reporting of SSA Black Lung benefits.

Records to be matched: SSA as "source agency" will provide Black Lung benefit payment information from the systems of records designated as Black Lung Payment System, HHS/SSA/OSR, 09-60-0045 contained in the Privacy Act Issuances, 1989 compilation, Volume I, page 467, matched against the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) contained in the Privacy Act Issuances, 1989 compilation, Volume II, pages 918-922 and as amended at Federal Register 56 FR 15667. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100-503.

The match is estimated to start April 1, 1992, but will start no sooner than 30 days after publication of this notice in the **Federal Register**, or 30 days after copies of this notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESS: Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: David G. Spivey (213B), (202) 233-3504.

SUPPLEMENTARY INFORMATION: This information is required by title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: April 6, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92-8395 Filed 4-10-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 71

Monday, April 13, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

TIME AND DATE: 10:00 a.m., April 16, 1992.

PLACE: Room 104–A Administration Building, U.S. Department of Agriculture, Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of Open Meeting of October 22, 1991.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)–Owned Inventory.
3. Memorandum re: Transfer of Funds from Commodity Credit Corporation (CCC) to USDA and Other Agencies for Fiscal Years 1990, 1991, and 1992.
4. Docket CZ–329, Commodity Credit Corporation Agreements with the Enviromental Protection Agency, States and Local Governments for 1992 and Subsequent Years.
5. Memorandum re: CCC Stocks Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949 in Fiscal Year 1992.
6. Memorandum re: GSM–102 and GSM–103 Export Credit Guarantee Country allocations for Fiscal Year 1992.
7. Resolution re: CZ–266, Resolution No. 29, Amendment 1, Ratification of Commodities Available for Public Law 480 During Fiscal Year 1992.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, D.C. 20013; telephone (202) 690–0490.

Dated: April 8, 1992.

James V. Hansen

Secretary, Commodity Credit Corporation.

[FR Doc. 92–8527 Filed 4–8–92; 4:48 pm]

BILLING CODE 3410–05–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Wednesday, April 15, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Mid-Year Review.

The staff will brief the Commission on FY 1992 mid-year review issues.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: April 9, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–8575 Filed 4–9–92; 2:05 am]

BILLING CODE 6355–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on April 6, 1992, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for May 4, 1992, in Washington, D.C. The members will consider the Postal Rate Commission's Opinion and Recommended Decision in Docket No. MC91–1, Pre-Barcoded Flats Discounts.

The meeting is expected to be attended by the following persons: Governors Alvardo, Daniels, del Junco, Giesemer, Mackie, Nevin, Pace, Setrakian and Winters; Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Cousel Hughes.

The Board determined that pursuant to section 552b(c)(3) Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39 United States Code; and section 7.3(c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 92–8628 Filed 4–9–92; 3:59 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 57, No. 71
Monday, April 13, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-557-805]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Extruded Rubber Thread From Malaysia

Correction

In notice document 92-7634 beginning on page 11287, in the issue of Thursday, April 2, 1992, make the following correction:

On page 11288, in the second column, after the second paragraph under the heading Such or Similar Comparisons, remove all text in the rest of that column.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 606

[Docket No. 92N-0141]

Biological Technical Amendment

Correction

§ 606.60 [Corrected]

In rule document 92-7583 appearing on page 11263, in the issue of Thursday, April 2, 1992, in the third column, in § 606.60, in the fourth line, insert "15" before "atmospheres.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90P-0193]

Cottage Cheese Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

Correction

In notice document 92-5514 beginning on page 8460, in the issue of Tuesday, March 10, 1992, make the following corrections:

1. On page 8460, in the third column, under SUMMARY:, in the seventh line, "the" should read "that".

2. On page 8461, in the first column, under SUPPLEMENTARY INFORMATION:, in the fourth paragraph, in the second line, "notify" was misspelled.

3. On the same page, in the second column, in the first full paragraph, in the seventh line, "rulemaking" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92F-0055]

Miles, Inc.; Filing of Food Additive Petition

Correction

In notice document 92-5595 appearing on page 8460, in the issue of Tuesday, March 10, 1992, in the third column, in the sixth line, "(21 CFRF 172.133)" should read "(21 CFR 172.133)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0291]

Order for Transitional Class III Devices; Submission of Safety and Effectiveness Information Under Section 520(l)(5)(A) of the Federal Food, Drug, and Cosmetic Act; Reopening of the Reporting Period

Correction

In notice document 92-5513 beginning on page 8462 in the issue of Tuesday, March 10, 1992, make the following corrections:

1. On page 8462, in the third column, the subject heading should read as set forth above.

2. On page 8463, in the first column, in the second paragraph, in the ninth line from the bottom, "misunderstanding" should read "misunderstandings".

3. On the same page, in the same column, in the last paragraph, in the fifth line from the bottom, "transitional" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4214-10; GP2-177; OR-48136]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

Correction

In notice document 92-6802 appearing on page 10367, in the issue of Wednesday, March 25, 1992, make the following correction:

In the second column, under SUPPLEMENTARY INFORMATION:, in the seventh line, "20 U.S.C." should read "30 U.S.C.".

BILLING CODE 1505-01-D

Reader Aids

Federal Register
Vol. 57, No. 71
Monday, April 13, 1992

INFORMATION AND ASSISTANCE

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Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
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Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

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Executive orders and proclamations	523-5230
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Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

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Guide to Record Retention Requirements	523-3187
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TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 6, 1992

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2233.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1990 Compilation and Parts 100 and 101)	(869-013-00002-1)	14.00	[1] Jan. 1, 1991
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-013-00004-8)	17.00	Jan. 1, 1991
700-1199	(869-013-00005-6)	13.00	Jan. 1, 1991
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
0-26	(869-013-00007-2)	15.00	Jan. 1, 1991
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
*52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
*210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-013-00015-3)	19.00	Jan. 1, 1991
900-999	(869-013-00016-1)	28.00	Jan. 1, 1991
1000-1059	(869-013-00017-0)	17.00	Jan. 1, 1991
1060-1119	(869-013-00018-8)	12.00	Jan. 1, 1991
1120-1199	(869-013-00019-6)	10.00	Jan. 1, 1991
1200-1499	(869-013-00020-0)	18.00	Jan. 1, 1991
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
1940-1949	(869-013-00023-4)	22.00	Jan. 1, 1991
1950-1999	(869-013-00024-2)	25.00	Jan. 1, 1991
*2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-013-00026-9)	14.00	Jan. 1, 1991
9 Parts:			
1-199	(869-013-00027-7)	21.00	Jan. 1, 1991
200-End	(869-013-00028-5)	18.00	Jan. 1, 1991
10 Parts:			
0-50	(869-013-00029-3)	21.00	Jan. 1, 1991
51-199	(869-013-00030-7)	17.00	Jan. 1, 1991
200-399	(869-017-00031-1)	13.00	[4] Jan. 1, 1987
400-499	(869-017-00032-9)	20.00	Jan. 1, 1992
500-End	(869-013-00033-1)	27.00	Jan. 1, 1991
11	(869-013-00034-0)	12.00	Jan. 1, 1991
12 Parts:			
1-199	(869-017-00035-3)	13.00	Jan. 1, 1992
200-219	(869-017-00036-1)	13.00	Jan. 1, 1992
220-299	(869-017-00037-0)	22.00	Jan. 1, 1992
300-499	(869-013-00038-2)	17.00	Jan. 1, 1991
500-599	(869-017-00039-6)	17.00	Jan. 1, 1992
600-End	(869-013-00040-4)	19.00	Jan. 1, 1991
*13	(869-017-00041-8)	25.00	Jan. 1, 1992

Title	Stock Number	Price	Revision Date
14 Parts:			
1-59	(869-017-00042-6)	25.00	Jan. 1, 1992
60-139	(869-013-00043-9)	21.00	Jan. 1, 1991
140-199	(869-017-00044-2)	11.00	Jan. 1, 1992
200-1199	(869-017-00045-1)	20.00	Jan. 1, 1992
1200-End	(869-017-00046-9)	14.00	Jan. 1, 1992
15 Parts:			
0-299	(869-013-00047-1)	12.00	Jan. 1, 1991
300-799	(869-013-00048-0)	22.00	Jan. 1, 1991
800-End	(869-017-00049-3)	17.00	Jan. 1, 1992
16 Parts:			
*0-149	(869-017-00050-7)	6.00	Jan. 1, 1992
150-999	(869-017-00051-5)	14.00	Jan. 1, 1992
1000-End	(869-013-00052-8)	19.00	Jan. 1, 1991
17 Parts:			
1-199	(869-013-00054-4)	15.00	Apr. 1, 1991
200-239	(869-013-00055-2)	16.00	Apr. 1, 1991
240-End	(869-013-00056-1)	23.00	Apr. 1, 1991
18 Parts:			
1-149	(869-013-00057-9)	15.00	Apr. 1, 1991
150-279	(869-013-00058-7)	15.00	Apr. 1, 1991
280-399	(869-013-00059-5)	13.00	Apr. 1, 1991
400-End	(869-013-00060-9)	9.00	Apr. 1, 1991
19 Parts:			
1-199	(869-013-00061-7)	28.00	Apr. 1, 1991
200-End	(869-013-00062-5)	9.50	Apr. 1, 1991
20 Parts:			
1-399	(869-013-00063-3)	16.00	Apr. 1, 1991
400-499	(869-013-00064-1)	25.00	Apr. 1, 1991
500-End	(869-013-00065-0)	21.00	Apr. 1, 1991
21 Parts:			
1-99	(869-013-00066-8)	12.00	Apr. 1, 1991
100-169	(869-013-00067-6)	13.00	Apr. 1, 1991
170-199	(869-013-00068-4)	17.00	Apr. 1, 1991
200-299	(869-013-00069-2)	5.50	Apr. 1, 1991
300-499	(869-013-00070-6)	28.00	Apr. 1, 1991
500-599	(869-013-00071-4)	20.00	Apr. 1, 1991
600-799	(869-013-00072-2)	7.00	Apr. 1, 1991
800-1299	(869-013-00073-1)	18.00	Apr. 1, 1991
1300-End	(869-013-00074-9)	7.50	Apr. 1, 1991
22 Parts:			
1-299	(869-013-00075-7)	25.00	Apr. 1, 1991
300-End	(869-013-00076-5)	18.00	Apr. 1, 1991
23	(869-013-00077-3)	17.00	Apr. 1, 1991
24 Parts:			
0-199	(869-013-00078-1)	25.00	Apr. 1, 1991
200-499	(869-013-00079-0)	27.00	Apr. 1, 1991
500-699	(869-013-00080-3)	13.00	Apr. 1, 1991
700-1699	(869-013-00081-1)	26.00	Apr. 1, 1991
1700-End	(869-013-00082-0)	13.00	[5] Apr. 1, 1990
25	(869-013-00083-8)	25.00	Apr. 1, 1991
26 Parts:			
§§ 1.0-1-1.60	(869-013-00084-6)	17.00	Apr. 1, 1991
§§ 1.61-1.169	(869-013-00085-4)	28.00	Apr. 1, 1991
§§ 1.170-1.300	(869-013-00086-2)	18.00	Apr. 1, 1991
§§ 1.301-1.400	(869-013-00087-1)	17.00	Apr. 1, 1991
§§ 1.401-1.500	(869-013-00088-9)	30.00	Apr. 1, 1991
§§ 1.501-1.640	(869-013-00089-7)	16.00	Apr. 1, 1991
§§ 1.641-1.850	(869-013-00090-1)	19.00	[5] Apr. 1, 1990
§§ 1.851-1.907	(869-013-00091-9)	20.00	Apr. 1, 1991
§§ 1.908-1.1000	(869-013-00092-7)	22.00	Apr. 1, 1991
§§ 1.1001-1.1400	(869-013-00093-5)	18.00	[5] Apr. 1, 1990
§§ 1.1401-End	(869-013-00094-3)	24.00	Apr. 1, 1991
2-29	(869-013-00095-1)	21.00	Apr. 1, 1991
30-39	(869-013-00096-0)	14.00	Apr. 1, 1991
40-49	(869-013-00097-8)	11.00	Apr. 1, 1991
50-299	(869-013-00098-6)	15.00	Apr. 1, 1991
300-499	(869-013-00099-4)	17.00	Apr. 1, 1991
500-599	(869-013-00100-1)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600-End	(869-013-00101-0)	6.50	Apr. 1, 1991
27 Parts:			
1-199	(869-013-00102-8)	29.00	Apr. 1, 1991
200-End	(869-013-00103-6)	11.00	Apr. 1, 1991
28	(869-013-00104-4)	28.00	July 1, 1991
29 Parts:			
0-99	(869-013-00105-2)	18.00	July 1, 1991
100-499	(869-013-00106-1)	7.50	July 1, 1991
500-899	(869-013-00107-9)	27.00	July 1, 1991
900-1899	(869-013-00108-7)	12.00	July 1, 1991
1900-1910 (§§ 1901.1 to 1910.999)	(869-013-00109-5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869-013-00110-9)	14.00	July 1, 1991
1911-1925	(869-013-00111-7)	9.00	[6] July 1, 1989
1926	(869-013-00112-5)	12.00	July 1, 1991
1927-End	(869-013-00113-3)	25.00	July 1, 1991
30 Parts:			
1-199	(869-013-00114-1)	22.00	July 1, 1991
200-699	(869-013-00115-0)	15.00	July 1, 1991
700-End	(869-013-00116-8)	21.00	July 1, 1991
31 Parts:			
0-199	(869-013-00117-6)	15.00	July 1, 1991
200-End	(869-013-00118-4)	20.00	July 1, 1991
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-189	(869-013-00119-2)	25.00	July 1, 1991
190-399	(869-013-00120-6)	29.00	July 1, 1991
400-629	(869-013-00121-4)	26.00	July 1, 1991
630-699	(869-013-00122-2)	14.00	July 1, 1991
700-799	(869-013-00123-1)	17.00	July 1, 1991
800-End	(869-013-00124-9)	18.00	July 1, 1991
33 Parts:			
1-124	(869-013-00125-7)	15.00	July 1, 1991
125-199	(869-013-00126-5)	18.00	July 1, 1991
200-End	(869-013-00127-3)	20.00	July 1, 1991
34 Parts:			
1-299	(869-013-00128-1)	24.00	July 1, 1991
300-399	(869-013-00129-0)	14.00	July 1, 1991
400-End	(869-013-00130-3)	26.00	July 1, 1991
35	(869-013-00131-1)	10.00	July 1, 1991
36 Parts:			
1-199	(869-013-00132-0)	13.00	July 1, 1991
200-End	(869-013-00133-8)	26.00	July 1, 1991
37	(869-013-00134-6)	15.00	July 1, 1991
38 Parts:			
0-17	(869-013-00135-4)	24.00	July 1, 1991
18-End	(869-013-00136-2)	22.00	July 1, 1991
39	(869-013-00137-1)	14.00	July 1, 1991
40 Parts:			
1-51	(869-013-00138-9)	27.00	July 1, 1991
52	(869-013-00139-7)	28.00	July 1, 1991
53-60	(869-013-00140-1)	31.00	July 1, 1991
61-80	(869-013-00141-9)	14.00	July 1, 1991
81-85	(869-013-00142-7)	11.00	July 1, 1991
86-99	(869-013-00143-5)	29.00	July 1, 1991
100-149	(869-013-00144-3)	30.00	July 1, 1991
150-189	(869-013-00145-1)	20.00	July 1, 1991
190-259	(869-013-00146-0)	13.00	July 1, 1991
260-299	(869-013-00147-8)	31.00	July 1, 1991
300-399	(869-013-00148-6)	13.00	July 1, 1991
400-424	(869-013-00149-4)	23.00	July 1, 1991
425-699	(869-013-00150-8)	23.00	[6] July 1, 1989
700-789	(869-013-00151-6)	20.00	July 1, 1991
790-End	(869-013-00152-4)	22.00	July 1, 1991
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

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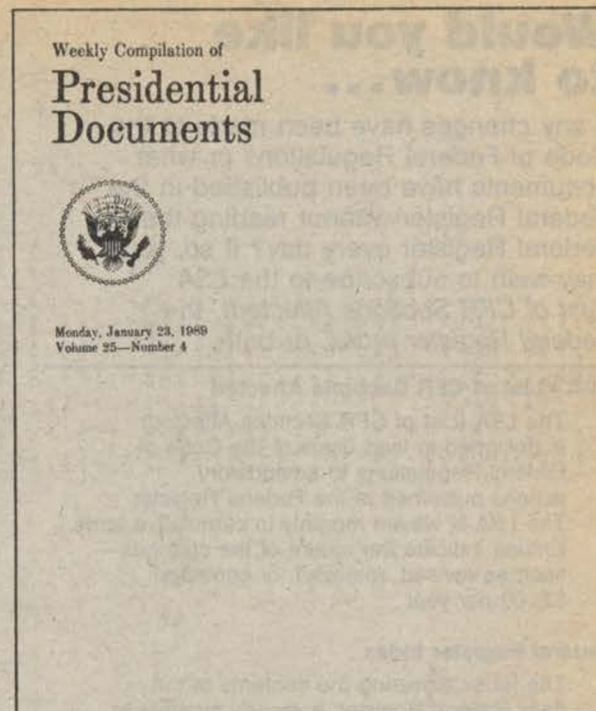
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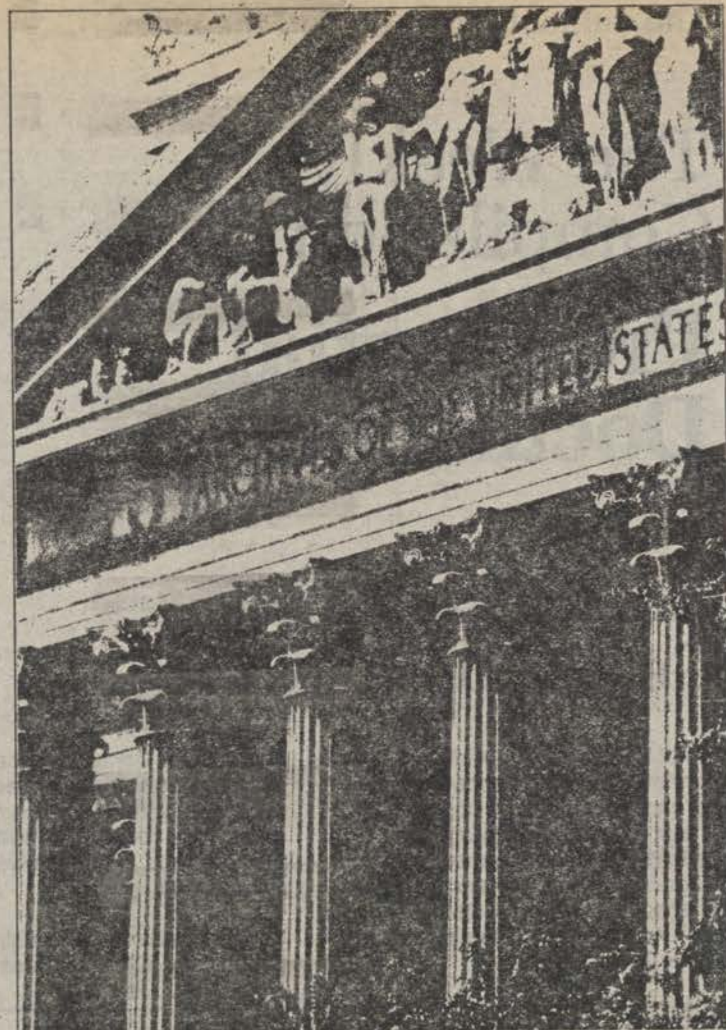

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